TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

No. 246.

DANIEL F. GUNN, GUARDIAN OF W. M. GUNN ET AL., APPELLANT,

vs.

INCREASE C. PLANT, ROBERT H. PLANT, AND MORRIS KETCHUM, PARTNERS UNDER THE FIRM NAME AND STYLE OF I. C. PLANT & SON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

FILED NOVEMBER 28, 1874.

SUPREME COURT OF THE UNITED STATES.

No. 246.

DANIEL F. GUNN, GUARDIAN OF U. M. GUNN, ET AL., APPELLANT,

vs.

INCREASE C. PLANT, ROBERT H. PLANT, AND MORRIS KETCHUM, PARTNERS UNDER THE FIRM NAME AND STYLE OF H. PLANT & SON.

APPEAL FROM THE CIRCUIT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF GEORGIA.

INDEX.

	Original.	Print.
Bill of complaint	1	1
interrogatories	5	3
Exhibit	7	4
Order for hearing on injunction	10	5
Order for injunction to issue	10	6
Transcript of record from Bibb superior court:		
Declaration	12	6
Process	13	7
Return of service	14	7
Acknowledgment of service	14	7
Verdict	15	7
Judgment on verdict	15	8
Fieri facias *vs.* Thomas J. Woolfolk *et al*	16	8
Receipt on fieri facias	17	8
Sheriff's return of levy	19	9
Power of attorney, D. F. Gunn to J. F. Bass	20	10
Receipt on fieri facias by attorney in fact	21	10
Affidavit of illegality	22	11
Bond on affidavit of illegality	22	11
Claim affidavit of Thomas J. Woolfolk	23	11
Claim bond of Thomas J. Woolfolk	24	12
Affidavit for benefit of relief act	25	12
Order to enter judgment for interest	26	13
Order to enter verdict *nunc pro tunc*	27	13
Notice of motion to set aside verdict and judgment	27	13
Denial of verdict, &c., and objections to motion	28	14
Plaintiff's judgment *nunc pro tunc*	30	14
Clerk's certificate	31	15
Judge's certificate	31	15
Remitter from Georgia supreme court	32	15

	Original.	Print.
Transcript:		
Bill of costs	33	16
Clerk's certificate	33	16
Agreement of counsel as to plea of security	33	16
Order on remitter	33	16
Clerk's certificate	34	16
Separate answer of Daniel F. Gunn, guardian	35	17
Joseph E. Murray, trustee	43	20
Affidavit of Joseph E. Murray, trustee	49	22
Injunction bond	50	23
Amendment to bill	51	23
Affidavit of James H. Blount	52	24
Consent as to amendment	53	24
Second amendment to bill	53	24
Acknowledgment of service	55	25
Answer of defendant Daniel F. Gunn to amended bill	56	25
Admissions to dispense with exemplification of State court records	59	27
Interrogatories directed to I. C. Plant and R. H. Plant	61	27
Acknowledgment of service	63	28
Cross-interrogatories	63	28
Copy of mortgage	66	29
Deposition of I. C. Plant	69	31
R. H. Plant	75	33
Exhibit A	79	35
Interrogatories directed to James H. Blount and Albert B. Ross	80	35
Cross-interrogatories	81	36
Acknowledgment of service	81	36
Deposition of James H. Blount	82	36
Albert B. Ross	83	37
Interrogatories directed to James H. Woolfolk and Thomas J. Woolfolk	85	37
Acknowledgment of service	87	38
Joint deposition of James H. and Thomas J. Woolfolk	88	39
Final decree	91	40
Petition for appeal	93	41
Order granting appeal	93	41
Motion to modify decree	94	41
Amendment to decree	95	42
ppeal-bond	96	42
Justification of surety	98	43
Approval of bond	98	43
Power of attorney, Daniel F. Gunn to U. M. Gunn	99	43
Clerk's certificate	101	44
Petition for allowance of appeal	101	44
Order	101	44

In the fifth circuit court of the United States for the southern district of Georgia.

DANIEL F. GUNN, GUARDIAN, APPELLANT,
vs.
I. C. PLANT AND SON, APPELLEES.

Appeal from the fifth circuit court of the United States for the southern district of Georgia.

R. W. Jemison, Jackson, Lawton & Basinger, Charles N. West, attorneys for appellant; Lanier & Anderson, W. U. Garrard, attorneys for appellees.

In the fifth circuit court of the United States of America for the southern district of Georgia.

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

At a stated term of the fifth circuit court of the United States of America for the southern district of Georgia, began and held according to law, on the second Monday (being the thirteenth day) of April, A. D. 1874, at the city of Savannah, in said southern district of Georgia, present and presiding, the honorable William B. Woods, U. S. judge for the fifth judicial circuit, and the honorable John Erskine, U. S. district judge for the district of Georgia, the following proceedings were had, to wit:

I. C. PLANT & SON
vs.
DANIEL F. GUNN, GUARDIAN, AND JOSEPH E. Murray, trustee. } In equity.

Be it remembered that heretofore, to wit, on the 12th day of January, A. D. 1872, in the fifth circuit court of the United States for the southern district of Georgia, came I. C. Plant & Son, complainants, by their solicitors, and exhibited and filed their bill of complaint in said fifth circuit court as follows:

1 *Bill of complaint.*

In fifth circuit court of the United States for the southern district of Georgia.

To the judges of the circuit court of the United States for the southern district of Georgia:

Increase C. Plant, Robert H. Plant, and Morris Ketchum, partners, using the firm-name and style of I. C. Plant and Son, of the city of Macon, county of Bibb, and State of Georgia, and citizens of the State of Georgia, except that the said Morris Ketchum is a citizen of the State of New York, bring this their bill, in their behalf, against Joseph E. Murray, trustee, in bankruptcy, of the estate of James H. Woolfolk, bankrupt, who resides in the county of Bibb, in the southern district of Georgia, & Daniel F. Gunn, guardian, who resides in the county of Houstoun, in the said southern district of Georgia.

And thereupon your orators complain & say that at the October (1869) term of the superior court of the county of Jones, in said State, they

obtained against the said James H. Woolfolk a judgment of foreclosure for the sum of four thousand nine hundred & sixty-three dollars & sixty-one cents, principal, interest on real property lying in the county of Jones, prior thereto, to wit, on the 7th day of December, in the year 1868, mortgaged by the said James H. Woolfolk to your orators, a description of which real property is as follows, to wit, lots of land numbers one hundred & eighty-three, one hundred & fifty-seven, one hundred
2 & eighty-two, & ninety acres of lot number one hundred & eighty-one, all situate in the sixth district, of originally Baldwin now Jones County, in said State of Georgia, & containing six hundred & ninety-seven & a half acres, a copy of which mortgage is hereto attached.

Your orators state that the amount for which the said judgment of foreclosure was obtained is wholly unpaid; that said James H. Woolfolk, with his copartners, Joel A. Walker & John A. Hafer, were, at the petition of some of their creditors, declared bankrupts on or about the day of , in the year 1869, and subsequently the said Joseph E. Murray was duly appointed trustee under the bankrupt act to administer the estate of the said bankrupts. Some time thereafter the real property mortgaged to your orators, as aforesaid, was brought to sale by the said trustee, under an agreement between him & your orators that the proceeds of the said sale should be deposited with your orators, & held by them at a certain rate of interest then agreed on, subject to the order of the bankrupt court as to the proper distribution thereof. And your orators state that the said Daniel F. Gunn, guardian, claims that the monies so deposited with your orators, to wit, the sum of five thousand eight hundred & thirty-four $\frac{50}{100}$ dollars, should be applied toward the payment of a judgment obtained by him at the November term, 1866, of the superior court of Bibb County, in said State, for the principal sum of eleven thousand two hundred & twelve dollars & thirty-eight cents, against Thomas J. Woolfolk & James H. Woolfolk as principal, & John W. Woolfolk as surety.

3 Your orators further state that said judgment in favor of said Gunn, guardian, was entered on what purports to be a verdict rendered by a jury at the term of the court at which said judgment was entered as aforesaid, but which alleged verdict was not entered on the minutes of that court at the said term, as your orators are advised & believe; nor was the same entered on the minutes of said court at all until the April term, 1870, of said court, when it was ordered to be entered, nunc pro tunc, on the minutes thereof, to which order a bill of exceptions was filed, & is now pending in the supreme court of said State. Your orators further allege that, at the time the said judgment in favor of the said Gunn, guardian, was entered as aforesaid, the said James H. Woolfolk owned lands in the counties of Bibb & Jones, in said State, besides the lands mortgaged to your orators as aforesaid, amply sufficient to pay the judgment so obtained by him, which lands are still subject to the payment of said judgment, but are not subject to the payment of the judgment of foreclosure obtained by your orators as aforesaid. The lands so owned by the said James H. Woolfolk, and subject to the payment of the judgment of the said Gunn, guardian, as aforesaid, are as follows, to wit: Lot lying near Griswoldville, in the county of Jones, in said State of Georgia, containing two hundred and two one-half acres; lot lying on Blue Branch, in Bibb County, in said State of Georgia, containing two hundred and two and one-half acres. Also, the following lots lying in the county of Bibb, in said State of Georgia, on the east side of the Ocmulgee River, and numbered, according to Dubois' map, to wit, numbers 29, 34, 39, 44, 48, 52, 56, 61, 98, each con-

taining four acres; and lots numbers 1 & 4 in block 1, No. 3 in block 3, Nos. 2 & 4 in block 5, Nos. 2 & 3 in block 7, and Nos. 1 & 3 in
4 block 8, each containing one acre, more or less; also lots T & W, lettered according to said map, each containing four acres.

The lands owned by the said John W. Woolfolk (the surety specified in said judgment of Gunn, guardian as aforesaid) and subject to said judgment are as follows: lots 100, 101, and 102, each containing one hundred acres, lying near to and on the west side of the Ocmulgee River, near Macon, and known as the Woolfolk property; also, lots numbers 41, 47, each containing 4 acres, and lots marked D & E, each containing 4 acres, all on the east side of said Ocmulgee River, near said city of Macon, numbered and marked according to Dubois' map.

Your orators state that if the said Gunn, guardian as aforesaid, is allowed to appropriate the proceeds of the sale of the property mortgaged to your orators, your orators will, as they verily believe—having no lien on any other property of the said Woolfolk, nor any other security whatever—lose the entire amount of their debt for wh ich the judgment of foreclosure was taken as aforesaid; whereas the said Gunn, guardian, having a judgment-lien on all the property of the said James H. Woolfolk, if his judgment is valid at all under the facts hereinbefore stated, can collect all that is justly due him without touching the fund raised by the sale of the property mortgaged to your orators as aforesaid. The judgment so held by the said Gunn, guardian as aforesaid, is the only judgment or lien older than the mortgage held by your orators as aforesaid.

Your orators, in view of the foregoing facts, pray that the said Gunn, guardian as aforesaid, be enjoined from claiming the fund aforesaid raised by the sale of the property mortgaged to your orators as afore-
5 said or appropriating the same to the payment of the judgment alleged to have been obtained by him as aforesaid, and that the said Joseph E. Murray, trustee as aforesaid, be enjoined from paying over or distributing any part of said fund to the said Gunn, guardian as aforesaid. And may it please your honor to decree that the said Gunn, guardian as aforesaid, be compelled to enforce payment of his judgment out of the property belonging to the defendants therein, & which is not subject to the mortgage & judgment of foreclosure obtained therein held by your orators as aforesaid, & further to decree that the fund aforesaid be applied to the payment of the amount due your orators on their said mortgage & judgment, & may it please your honors to grant to your orators such other & further relief as to your honors may seem equitable & just.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed & may upon their several & respective corporal oaths & according to the best & utmost of their several and respective knowledge, remembrance, information & belief, full, true, direct & perfect answer make to such of the several interrogatories hereinafter numbered & set forth as by the note hereunder written they are respectively required to answer, that is to say:

Interrogatories:

1st. Whether the judgment of the said Gunn, guardian as aforesaid, was not entered on what purports to be a verdict which was not entered on the minutes of the court until the April term, 1871, thereof, & whether a bill of exceptions is not now pending allowing it to be then entered on the minutes?

obtained against the said James H. Woolfolk a judgment of foreclosure for the sum of four thousand nine hundred & sixty-three dollars & sixty-one cents, principal, interest on real property lying in the county of Jones, prior thereto, to wit, on the 7th day of December, in the year 1868, mortgaged by the said James H. Woolfolk to your orators, a description of which real property is as follows, to wit, lots of land numbers one hundred & eighty-three, one hundred & fifty-seven, one hundred
2 & eighty-two, & ninety acres of lot number one hundred & eighty-one, all situate in the sixth district, of originally Baldwin now Jones County, in said State of Georgia, & containing six hundred & ninety-seven & a half acres, a copy of which mortgage is hereto attached.

Your orators state that the amount for which the said judgment of foreclosure was obtained is wholly unpaid; that said James H. Woolfolk, with his copartners, Joel A. Walker & John A. Hafer, were, at the petition of some of their creditors, declared bankrupts on or about the day of , in the year 1869, and subsequently the said Joseph E. Murray was duly appointed trustee under the bankrupt act to administer the estate of the said bankrupts. Some time thereafter the real property mortgaged to your orators, as aforesaid, was brought to sale by the said trustee, under an agreement between him & your orators that the proceeds of the said sale should be deposited with your orators, & held by them at a certain rate of interest then agreed on, subject to the order of the bankrupt court as to the proper distribution thereof. And your orators state that the said Daniel F. Gunn, guardian, claims that the monies so deposited with your orators, to wit, the sum of five thousand eight hundred & thirty-four $\frac{50}{100}$ dollars, should be applied toward the payment of a judgment obtained by him at the November term, 1866, of the superior court of Bibb County, in said State, for the principal sum of eleven thousand two hundred & twelve dollars & thirty-eight cents, against Thomas J. Woolfolk & James H. Woolfolk as principal, & John W. Woolfolk as surety.

3 Your orators further state that said judgment in favor of said Gunn, guardian, was entered on what purports to be a verdict rendered by a jury at the term of the court at which said judgment was entered as aforesaid, but which alleged verdict was not entered on the minutes of that court at the said term, as your orators are advised & believe; nor was the same entered on the minutes of said court at all until the April term, 1870, of said court, when it was ordered to be entered, nunc pro tunc, on the minutes thereof, to which order a bill of exceptions was filed, & is now pending in the supreme court of said State. Your orators further allege that, at the time the said judgment in favor of the said Gunn, guardian, was entered as aforesaid, the said James H. Woolfolk owned lands in the counties of Bibb & Jones, in said State, besides the lands mortgaged to your orators as aforesaid, amply sufficient to pay the judgment so obtained by him, which lands are still subject to the payment of said judgment, but are not subject to the payment of the judgment of foreclosure obtained by your orators as aforesaid. The lands so owned by the said James H. Woolfolk, and subject to the payment of the judgment of the said Gunn, guardian, as aforesaid, are as follows, to wit: Lot lying near Griswoldville, in the county of Jones, in said State of Georgia, containing two hundred and two one-half acres; lot lying on Blue Branch, in Bibb County, in said State of Georgia, containing two hundred and two and one-half acres. Also, the following lots lying in the county of Bibb, in said State of Georgia, on the east side of the Ocmulgee River, and numbered, according to Dubois' map, to wit, numbers 29, 34, 39, 44, 48, 52, 56, 61, 98, each con-

taining four acres; and lots numbers 1 & 4 in block 1, No. 3 in block 3, Nos. 2 & 4 in block 5, Nos. 2 & 3 in block 7, and Nos. 1 & 3 in block 8, each containing one acre, more or less; also lots T & W, lettered according to said map, each containing four acres.

The lands owned by the said John W. Woolfolk (the surety specified in said judgment of Gunn, guardian as aforesaid) and subject to said judgment are as follows: lots 100, 101, and 102, each containing one hundred acres, lying near to and on the west side of the Ocmulgee River, near Macon, and known as the Woolfolk property; also, lots numbers 41, 47, each containing 4 acres, and lots marked D & E, each containing 4 acres, all on the east side of said Ocmulgee River, near said city of Macon, numbered and marked according to Dubois' map.

Your orators state that if the said Gunn, guardian as aforesaid, is allowed to appropriate the proceeds of the sale of the property mortgaged to your orators, your orators will, as they verily believe—having no lien on any other property of the said Woolfolk, nor any other security whatever—lose the entire amount of their debt for wh ich the judgment of foreclosure was taken as aforesaid; whereas the said Gunn, guardian, having a judgment-lien on all the property of the said James H. Woolfolk, if his judgment is valid at all under the facts hereinbefore stated, can collect all that is justly due him without touching the fund raised by the sale of the property mortgaged to your orators as aforesaid. The judgment so held by the said Gunn, guardian as aforesaid, is the only judgment or lien older than the mortgage held by your orators as aforesaid.

Your orators, in view of the foregoing facts, pray that the said Gunn, guardian as aforesaid, be enjoined from claiming the fund aforesaid raised by the sale of the property mortgaged to your orators as aforesaid or appropriating the same to the payment of the judgment alleged to have been obtained by him as aforesaid, and that the said Joseph E. Murray, trustee as aforesaid, be enjoined from paying over or distributing any part of said fund to the said Gunn, guardian as aforesaid. And may it please your honor to decree that the said Gunn, guardian as aforesaid, be compelled to enforce payment of his judgment out of the property belonging to the defendants therein, & which is not subject to the mortgage & judgment of foreclosure obtained therein held by your orators as aforesaid, & further to decree that the fund aforesaid be applied to the payment of the amount due your orators on their said mortgage & judgment, & may it please your honors to grant to your orators such other & further relief as to your honors may seem equitable & just.

To the end, therefore, that the said defendants may, if they can, show why your orators should not have the relief hereby prayed & may upon their several & respective corporal oaths & according to the best & utmost of their several and respective knowledge, remembrance, information & belief, full, true, direct & perfect answer make to such of the several interrogatories hereinafter numbered & set forth as by the note hereunder written they are respectively required to answer, that is to say:

Interrogatories:

1st. Whether the judgment of the said Gunn, guardian as aforesaid, was not entered on what purports to be a verdict which was not entered on the minutes of the court until the April term, 1871, thereof, & whether a bill of exceptions is not now pending allowing it to be then entered on the minutes?

6 2nd. Whether the said James H. Woolfolk did not own land when said judgment of said Gunn, guardian, was obtained, & which lands are now subject to the payment of said judgment, amply sufficient to pay the same.

May it please your honors to grant to your orators the writ of subpœna requiring the said Joseph E. Murray, trustee as aforesaid, & the said Daniel F. Gunn, guardian as aforesaid, to be & appear at rules to be held in the city of Savannah, in said southern district of Georgia, on the first Monday of February, in the year eighteen hundred and seventy-two, then and there to answer this bill, and to stand to, abide, do, & perform the order & decree of the court in the premises.

LANIER & ANDERSON,
Complts. Sols.

The defendants, Joseph E. Murray, trustee of James H. Woolfolk, in bankruptcy, and Daniel F. Gunn, guardian, are each required to answer the interrogatories numbered respectively 1 & 2 propounded in the foregoing bill.

LANIER & ANDERSON,
Complts. Sols.

JAN. 10th, 1872.

GEORGIA, *Bibb County:*

Before me personally came Increase C. Plant, one of the firm of I. C. Plant & Son, complainants in the foregoing bill, who, on oath, says that the facts stated in said bill, so far as they relate to the acts &
7 deeds of said firm, are true of his own knowledge, and so far as they relate to the acts & deeds of others he believes them to be true.

I. C. PLANT.

Sworn to & subscribed before me this Jany. 11th, 1872.

W. W. WRIGLEY,
Notary Public.

EXHIBIT.

GEORGIA, *Bibb County:*

This indenture, made & entered into this the seventh day of December, eighteen hundred and sixty-eight, between James H. Woolfolk, of said county, of the first part, and Increase C. Plant and Robert H. Plant, partners, using the firm name of "I. C. Plant & Son," of said county, of the second part, witnesseth, that whereas the firm of Woolfolk, Walker & Company, of which firm the said party of the first part is a member, and as such, is bound for the payment of the debts hereinafter described, is indebted to the said I. C. Plant & Son as follows: On a draft drawn by P. H. Oliver on the said Woolfolk, Walker & Co., payable to their order and accepted and endorsed by them, for the sum of two thousand one hundred & sixty-eight $\frac{12}{100}$ dollars, dated July 25th, 1868, and due on the first of November next thereafter, on which there is a credit of nine hundred dollars dated Nov. 10th, 1868, leaving now due thereon twelve hundred and sixty-eight $\frac{12}{100}$ dollars be-
8 sides interest; on a draft drawn by R. F. Woolfolk on said Woolfolk, Walker & Co., & accepted by them, for eighteen hundred & forty-one $\frac{71}{100}$ dollars, dated November 21st, 1868, & payable fifteen days thereafter to the order of said Plant & Son, and being for an advance on 20 bales cotton described in the warehouse receipts attached to said draft; on a receipt on contract of the said Woolfolk,

Walker & Co., dated November 10th, 1868, showing that said Plant & Son advanced them fifteen hundred seventy-eight $\frac{15}{100}$ dollars on seventeen bales of cotton, described therein & in the warehouse receipts attached thereto, which they agreed to pay back on the 10th day of December, 1868, with interest, insurance, & all other expenses then due to said Plant & Son; also for advances made to said Woolfolk, Walker & Co. under an agreement in writing signed by them, dated October 16th, 1868, and contained in a book held by said Plant & Son showing said advances as follows: Five hundred and ninety dollars, advanced October 16th, 1868; twenty-one hundred and fifty dollars, advanced October 17th, 1868; six hundred dollars, advanced October 23rd, 1868; two hundred and twenty-five dollars, advanced October 29th, 1868; one thousand dollars, advanced October 31st, 1868; and two hundred and fifty dollars, advanced November 6th, 1868; on each of which said advances the said Woolfolk, Walker & Co. is indebted to said Plant & Son for interest & insurance as well as the amounts advanced.

Now, for and in consideration of five dollars paid by the said party of the second part to the said party of the first part, the receipt of which is hereby acknowledged, as well as to secure to the said parties of
9 the second part the payment of the several amounts so due them as aforesaid, the said party of the first part hereby bargains, sells, and conveys to the said parties of the second part, their heirs & assigns, lots of land numbers one hundred & eighty-three, one hundred & fifty-seven, one hundred and eighty-two, and ninety acres of lot number one hundred and eighty-one, being the north part of said lot, all situated in the sixth district of originally Baldwin now Jones County, in said State, and containing six hundred and ninety-seven and a half acres, more or less. To have and to hold said parcels and lots of land to the said parties of the second part, their heirs and assigns, with all the rights, incumbrances, and appurtenances to said land in anywise appertaining or belonging, upon condition, however, if said party of the first part shall pay or cause to be paid to the said parties of the second part the said several sums of money so due and to become due to them as aforesaid, with the interest and insurance which may accrue thereon up to the time of the payment thereof, then this indenture to be void; otherwise of full force.

If any of said debts are renewed, this mortgage to cover such renewed debts or debt.

In witness whereof the said James H. Woolfolk has hereunto set his hand and affixed his seal the day & year first aforesaid.

The words, "If any of said debts are renewed, this mortgage to cover such renewed debt or debts," added before signing.

(Signed) JAS. H. WOOLFOLK.

Witness:
THOS. J. WOOLFOLK.
W. W. WRIGLEY,
Notary Public.

10 A correct copy.

W. W. WRIGLEY,
Notary Public.

Order for hearing on injunction.

AT CHAMBERS, *Jan'y* 13, '72.

Let a notice or order in conformity to law be given to defendants to show cause, at the U. S. court-room at Atlanta on the 23rd inst., at 10

a. m., why the prayer of the complainants for an injunction should not be granted. Defendants to have the proper notice at least five (5) days prior to the day named for the hearing—23rd inst.

JOHN ERSKINE,
U. S. Judge.

Order for injunction to issue.

AT CHAMBERS,
Atlanta, Georgia, January 24th, 1872.

After considering the foregoing bill and affidavits filed in sup-
11 port thereof and the answer and affidavits filed by the defendants, it is ordered that on complainants filing bond with good security, to be approved by a commissioner of the United States court, in the sum of five thousand dollars, the defendants be enjoined as prayed for until the writ of error pending in the supreme court of Georgia, relative to the judgment in favor of the defendant, Gunn, shall have been disposed of and the decision of that court thereon duly transmitted to the superior court of Bibb County, when a further hearing on said bill will be ordered if necessary. Said bond of complainants to be conditioned to pay such damages as the said Gunn, guardian, may sustain by reason of said application for injunction.

Jan'y 24, '72.

JOHN ERSKINE,
U. S. Judge.

(Endorsed:) U. S. circuit court, so. dist. of Georgia. In equity. I. C. Plant & Son, complts., and Daniel F. Gunn, guardian, &c., and Joseph E. Murray, trustee, &c. Original bill for injunction. Filed of Jan'y 12, 1872. Jas. McPherson, clerk. Order for hearing. Order for injunction and bond. Rec'd & filed Mar. 28, 1872. Jas. McPherson, clerk. Lanier & Anderson, sols. for complt.

12 TRANSCRIPT OF RECORD FROM BIBB SUPERIOR COURT OF CASE OF DANIEL F. GUNN, GUARDIAN, VS. THOS. J. WOOLFOLK ET AL.

Declaration.

GEORGIA, *Bibb County:*

To the superior court of said county:

The petition of Daniel F. Gunn respectfully sheweth that Thomas J. Woolfolk, of Jones County, James H. Woolfolk, of Bibb County, & John W. Woolfolk, of Houston County, *of Houston County*, indebted to your petitioner in the sum of eleven thousand four hundred (11,400) dollars and sixty-eight (68) cents, besides interest, on a promissory note dated 12th day of January, in the year eighteen hundred and fifty-eight, payable to J. W. Woolfolk or bearer, and due on or before the first day of January, eighteen hundred and fifty-nine, a copy of which is hereunto attached, which said promissory note the said Thomas J. Woolfolk, James H. Woolfolk, & John W. Woolfolk, security, refused to pay. Wherefore your petitioner prays process may issue requiring the said Thomas, James, and John to be and appear at the next supe-
rior court of said county, to answer your petitioner's complaint.
13

N. H. BASS,
Plaintiff's Attorney.

(Copy.)

$11,400 $\frac{68}{100}$.

On or before the first day of January next, we, or either of us, promise to pay to J. W. Woolfolk, or bearer, eleven thousand four hundred $\frac{6^{8}}{100}$ dollars, for value received.

Macon, January 12th, 1858.

THOMAS J. WOOLFOLK.
JAMES H. WOOLFOLK.
JOHN W. WOOLFOLK, *Security.*

Received of J. H. Woolfolk, on the within note, twelve hundred & sixteen $\frac{89}{100}$ dollars.

APRIL 14th, 1860.

Process.

vs. } Complaint.

GEORGIA, *Bibb County:*

To the sheriff of said county:

The defendants are hereby required, personally or by attorney, to be and appear at the superior court, to be holden in and for the county of Bibb, on the 3rd Monday in May next, then and there to answer the plaintiff's complaint, as in default thereof the court will proceed as to justice shall appertain.

14 Witness the honorable Carleton B. Cole, judge of said court, this 26th day of April, 1866.

A. B. ROSS, *Clerk.*

Return of service.

GEORGIA, *Bibb County:*

I have executed the within by leaving a copy of it on James H. Woolfolk in person.

Macon, April 26th, 1866.

PAT. CROWN,
Dep. Sheriff.

Acknowledgment of service.

I acknowledge service & waive all further process.

Jones Co., Geo., May 3d, 1866.

THOS. J. WOOLFOLK.

I acknowledge service and waive a copy.

J. W. WOOLFOLK.

15 *Verdict.*

We, the jury, find for the plaintiff against the defendant eleven thousand two hundred & twelve dollars & thirty-eight cents, with interest from the fourteenth day of April, eighteen hundred & sixty, (1860.)

B. F. WILDER, *Foreman.*

Judgment on verdict.

Bibb superior court, November term, 1866.

Principal, $11,212$\frac{88}{100}$; interest to .
Whereupon, it is considered by the court that the plaintiff do recover of defendants, Thomas J. Woolfolk, James H. Woolfolk, & John W. Woolfolk, the sum of eleven thousand two hundred & twelve (11,212) dollars and thirty-eight cents for principal debt, and dollars and cents for interest to , and the sum of dollars and cents for costs in this behalf expended, and the defendant be in mercy.

Judgment signed this twenty-first day of November, 1866.

N. H. BASS,
Plaintiff's Attorney.

Endorsed: No. 90. Bibb superior court, May term, 1866. Daniel F. Gunn *vs.* Thomas J. Woolfolk, James H. Woolfolk, John W. Woolfolk, security. Filed Ap'l 26th, 1866. A. B. Ross, clerk.

16 FI. FA.
vs.
THOS. J. WOOLFOLK ET AL.

GEORGIA, *Bibb County:*

To all & singular the sheriff of said State, greeting:

We command you, that of the goods & chattels, lands & tenements, of Thomas J. Woolfolk, James H. Woolfolk, & John W. Woolfolk, security, you cause to be made the sum of eleven thousand two hundred & twelve dollars & thirty-eight cents, principal, and also the further sum of twenty dollars and seventy cents for cost, with interest on the principal sum from the fourteenth day of April, 1860, which Daniel F. Gunn, guardian, lately in our superior court for said county recovered against Thomas J. Woolfolk, James H. Woolfolk, and John W. Woolfolk, security, for principal, interest, and cost, and that you have the said several sums of money before the judge of said court on the third Monday in May next, to render to the said Daniel F. Gunn, guardian, for principal, interest, & cost aforesaid, & have you then & there this writ.

Witness the honorable Carleton B. Cole, judge of said court, this 28th day of November, 1866.

W. M. RILEY, *Dep. Clerk.*

17 *Receipts on foregoing fi. fa.*

Received on the within execution this the 10th day of December, 1866, twenty $\frac{70}{100}$ ($20\frac{70}{100}$) dollars in payment of cost.

N. H. BASS, *Att'y.*

Rec'd from N. H. Bass, pl'ffs' att'y, sixteen $\frac{70}{100}$ dollars, cl'k & shff's cost of Bibb & jury-fee on the within fi. fa., Dec. 10, 1867.

W. M. RILEY, *Dep. Cl'k.*

Rec'd Dec. 7th, 1868, six hundred dollars, ($600.00,) in consideration of which the following property is released and discharged from the

lien of this execution, to wit: Lots T, E, W, as described in deed made this day by James H. Woolfolk & Thomas J. Woolfolk to John D. Thorp.

J. F. BASS,
Att'y at law for Pl'ff in fi. fa.

Rec'd Jan'y 20th, 1869, of James H. Woolfolk, the sum of twenty-two hundred dollars on the within fi. fa., in consideration of which the following property, this day sold to Hubbard Reynolds, of Twiggs County, is released from the lien of said fi. fa., to wit: Lot No. (10) ten, in the sixth district of originally Baldwin, now Twiggs & Jones Counties, containing (202½) acres, more or less.

18

J. F. BASS,
Atty. at Law & in fact for Plff. in fi. fa.

DANIEL F. GUNN, GUARDIAN,
vs.
JAS. H. WOOLFOLK, THOS. J. WOOLFOLK, Jno. W. Woolfolk. } Fi. fa. in Bibb superior court, Nov. term, 1867.

Rec'd of Thos. J. Woolfolk, one of the defendants in the above fi. fa., thro' the hands of U. M. Gunn, twenty-four hundred dollars, & in consideration of which, thirty-eight (38) acres of land, purchased by the said U. M. Gunn from the said Thos. J. Woolfolk, are hereby released from the lien of said fi. fa., said land being in said county, about one mile above East Macon, and adjoining the lands of Iverson & Thos. J. Woolfolk.

Feb. 1st, 1869.

J. F. BASS,
Atty. for Plffs.

DAN'L F. GUNN
vs.
JAS. H. WOOLFOLK, THOS. J. WOOLFOLK, & Jno. W. Woolfolk. } Fi. fa. in Bibb superior court, Nov. term, 1867.

Rec'd of Thos. J. Woolfolk, one of the defendants in the above fi. fa., thro' the hands of Alfred Iverson, sr., the sum of fifteen hundred dollars, paid on the 15th of February, 1869, & in consideration of
19 which, fifteen acres of land purchased by the said Iverson from the said Woolfolk are hereby released from the lien of said fi. fa., said land lying in said county, about one mile above East Macon, and adjoining the lands of H. T. Powell, Willbum, & U. M.

Feby. 15th, 1869.

J. F. BASS,
Atty. for Plaintiff.

Sheriff's return of levy.

GEORGIA, *Bibb County:*

Levied on the undivided two-fifths (⅔) interest of T. J. & J. W. Woolfolk in part of lot number one, (1,) square nineteen, (19,) known as Grier & Masterson's livery-stable; also, on four (4) acres of land, more or less, with improvements thereon, lying on the east side of the Ocmulgee River, & known as Fort Hill, (or Fort Hawkins,) said improvements consisting of one large brick dwelling & outhouses, as the property of J. W. Woolfolk. Property pointed out by plaintiff's attorney.

October 4th, 1869.

JAMES MARTIN,
Sheriff.

Returned to office of clerk of superior court, under two affidavits of illegality, & damage bond being interposed. Also, one affidavit for the benefit of an act entitled "An act for the relief of debtors & to authorize the adjustment of debts upon principles of equity."

October 14th, 1869.

JAMES MARTIN,
Sheriff.

20 *Power of attorney from D. F. Gunn to J. F. Bass.*

GEORGIA, *Bibb County:*

Know all men by these presents that I, Daniel F. Gunn, of the county of Houston, said State, for sufficient causes & considerations, have made & appointed & doth hereby make & appoint Josiah F. Bass, of the county of Bibb, & said State, my true & lawful attorney, for me & in my name, and for my use and benefit, to discharge and release the lien which I hold as plaintiff in fi. fa. upon all the real & personal estate of James H. Woolfolk & Thomas J. Woolfolk, of the county of Bibb, & said State, & to receive in consideration of said discharge & release, in my name & for me, the value & price of said land, or any part thereof which may be sold at private sale to satisfy the fi. fa. which I hold against said parties, and to do all lawful things necessary to the execution of this power of attorney.

In witness whereof I have hereunto set my hand & seal this eighteenth day of December, 1868.

D. F. GUNN,
Guardian.

Signed, sealed, & delivered in presence of—
U. M. GUNN.
L. N. WHITTLE,
Notary Public.

21 GEORGIA, *Bibb County:*

CLERK'S OFFICE, SUPERIOR COURT.

Recorded in book "T," folio 236, Jan'y 20th, 1869.

A. B. ROSS, *D. Clk.*

GEORGIA, *Twiggs County:*

CLERK'S OFFICE, SUPERIOR COURT.

Recorded in book "O," folio 361–'2, Jan'y 25th, 1869.

J. U. BURKETT, *Clk.*

Receipt on fi. fa. by attorney in fact.

GEORGIA, *Bibb County:*

By virtue of the within power I have this day rec'd, on the fi. fa. therein described, the sum of twenty-two hundred dollars, in consideration for which I hereby release from the lien of said fi. fa. the following property which was subject to said lien, to wit: Lot No. (10) ten, in the sixth district of originally Baldwin, now Twiggs & Jones Counties.

J. F. BASS,
Atty. in fact for D. F. Gunn, Guardian.

22 *Affidavit of illegality.*

DANIEL F. GUNN, G'D'N, &C.,
vs.
THOMAS J. WOOLFOLK, JAMES H. WOOLFOLK, & John W. Woolfolk, security.

Judgment & fi fa. In Bibb superior court. To May term, 1867.

GEORGIA, *Bibb County:*

Personally came John W. Woolfolk, one of the defendants in the above case, who, being duly sworn, says the above-stated execution is proceeding illegally against him as a security, for he says that said judgment & execution issued against him as surety only; & that without his consent the plaintiff has given time & further day of payment to his co-defendants, & that this deponent has been injured & damaged by said delay & indulgence, & he, as surety, has been thereby entirely released & discharged from any further liability on account of same.

JOHN W. WOOLFOLK.

Sworn to & subscribed before me Oct. 13th, 1869.

A. B. ROSS,
D. Clk. Supr. Court.

Bond on affidavit of illegality.

GEORGIA, *Bibb County:*

Know all men by these presents that we, John W. Woolfolk,
23 principal, & Richard F. Woolfolk, his security, are held & bound unto James Martin, as sheriff of Bibb County, in the just & full sum of twelve thousand dollars; for the true payment of which sum, well & truly to be made, we bind ourselves, our executors & administrators, jointly & severally, firmly by these presents.

Witness our hands and seals this October 13th, 1869.

The condition of the above bond is this: That whereas said Martin, as sheriff aforesaid, has lately levied an execution from Bibb superior court in favor of Daniel F. Gunn, guardian, vs. Thomas J. Woolfolk, James H. Woolfolk, & John W. Woolfolk, security, upon four acres of land & the improvements thereon, known as Fort Hawkins, as the property of said John W. Woolfolk, to which execution & levy said John W. Woolfolk has filed his affidavit of illegality: Now if the said John W. Woolfolk shall well & truly pay to the plaintiff in said execution all damages which the jury, on the trial of said illegality, may assess against him, in case it should appear that said illegality was made for the purpose of delay only, then this bond to be null and void; else remain in full force and effect.

JOHN W. WOOLFOLK. [L. S.]
R. F. WOOLFOLK. [L. S.]

Tested & approved by—

A. B. ROSS,
D. Clk. Supr. Court.

Claim affidavit of T. J. Woolfolk, ex'or.

GEORGIA, *Bibb County:*

Personally came Thomas J. Woolfolk, as executor of Thomas
24 Woolfolk, late of said county, deceased, who, being duly sworn,

says that the lot & improvements in Macon, known as Grier & Masterson's livery-stable, being part of lot No. 1, in square 19, two-fifths of which have lately been levied on by James Martin, sheriff of said county, by virtue of a fi. fa. from Bibb superior court in favor of Daniel F. Gunn, guardian, against Thomas J. Woolfolk, James H. Woolfolk, & John W. Woolfolk, is not the property of said T. J. & J. W. Woolfolk, or either of them, but that the same is the property of this deponent as executor of said Thomas Woolfolk, deceased.

THOS. J. WOOLFOLK.

Sworn to & subscribed before me this Oct. 13th, 1869.

A. B. ROSS,
D. C'k Supr. Court.

Claim bond of T. J. Woolfolk, ex'or.

GEORGIA, *Bibb Connty:*

Know all men by these presents that we, Thomas J. Woolfolk, as executor of Thomas Woolfolk, deceased, as principal, & John W. Woolfolk, his security, are held & firmly bound unto Daniel Gunn, guardian, plff. in fi. fa., in the just & full sum of four thousand dollars; for the payment of which, well & truly to be made, we bind ourselves, our heirs, executors, & administrators, jointly & severally, firmly by these presents, signed with our hands & sealed with our seals this 13th day of October, A. D. 1869.

The condition of the above bond is this, whereas, James Martin,
25 as sheriff of Bibb County, has lately levied a certain fi. fa. from Bibb superior court in favor of Daniel F. Gunn, guardian, against Thos. J. Woolfolk, James H. Woolfolk, & John W. Woolfolk, security, upon two-fifths undivided interest in part of lot No. 1, in square No. 19, of the city of Macon, known as Grier & Masterson's livery-stable, as the property of T. J. & J. Woolfolk, and which has this day been claimed by said Thomas J. Woolfolk, as executor of Thomas Woolfolk, deceased, as being his property as executor aforesaid: Now, if the said Thomas J. Woolfolk, as executor of said Thomas Woolfolk, deceased, shall pay the plaintiff in said execution all damages which the jury on the trial of the right of property may assess against him, in case it should appear that said claim was made for the purpose of delay only, then this bond to be null and void; else remain of full force & effect.

THOS. J. WOOLFOLK, *Ex'tr.* [L. S.]
JOHN W. WOOLFOLK. [L. S.]

Tested & approved by—

A. B. ROSS,
D. Clk. Sup'r Court.

Affidavit for benefit of relief act.

GEORGIA, *Bibb County:*

Personally came Thomas J. Woolfolk who, on oath, says that an execution issued from Bibb superior court, returnable to May term, 1867, in favor of D. F. Gunn, guardian, &c., vs. Thomas J. Woolfolk, & James H. Woolfolk, & John W. Woolfolk, security, levied upon the undivided ($\frac{2}{5}$) two-fifths interest of T. J. & J. W. Woolfolk in part of lot No.
26 1, in square No. 19, (known as Grier & Masterson's livery-stables; also, four acres of land, more or less, with improvements, on east side of Ocmulgee River, known as Fort Hill or Fort Hawkins; improve-

ments consisting of brick dwelling & outhouses; was issued upon a judgment entered upon a debt contracted prior to the 1st day of June, 1865, & that he desires to take the benefit of the remedy provided for in an act of the general assembly of the State of Georgia, entitled "An act for the relief of debtors, & to authorize the adjustment of debts upon principles of equity."

THOS. J. WOOLFOLK.

Sworn to & subscribed before me this Oct. 13th, 1869.

A. B. ROSS,
D. Clk. Supr. Court.

Order to enter judgment for interest.

From minutes Bibb superior court, April term, 1871.

DANIEL F. GUNN *vs.* THOS. J. WOOLFOLK, JAMES H. WOOLFOLK, John W. Woolfolk, security.	Complaint in Bibb superior court, May term, 1866, & verdict to November term, 1866.

It appearing to the court that the plaintiff failed to enter his judgment for the interest as contemplated by the verdict, it is therefore ordered, upon motion of plff.'s counsel, that plaintiff have leave to amend said judgment, so far as the interest is concerned, nunc pro tunc.

27 JEMISON & NISBET,
Plff.'s Attys.

Order to enter verdict nunc pro tunc.

From minutes Bibb superior court, April term, 1871.

DANIEL F. GUNN *vs.* THOS. J. WOOLFOLK, JAMES H. WOOLFOLK, John W. Woolfolk, security.	Complaint, in Bibb superior court, to May term, 1866, & verdict to November term, 1866.

It appearing to the court, from the entry upon the bench-docket, & from the original papers of file in the above-stated case, that a verdict was rendered by the jury at the November term, 1866, of this court, and that the clerk of this court failed to enter said verdict upon the minutes of the court, upon motion of counsel for plaintiff it is ordered that said verdict be entered nunc pro tunc.

HUNTER, JEMISON & NISBET,
Plff.'s Attys.

Notice of motion to set aside verdict and judgment, &c.

DANIEL F. GUNN, G'D'N, *vs.* THOMAS J. WOOLFOLK, JAMES H. WOOLFOLK, & John W. Woolfolk, security.	Fi. fa. in Bibb superior court, to November term, 1869.

28 Plff.'s counsel will please take notice that we shall move the court, so soon as counsel can be heard, to set aside the above fi. fa., & the judgment on which it claims to be founded, because the same, or either of the same, is founded on any legal verdict or other legal au-

thority; because said fi. fa. and judgment are without any legal authority & cannot be found in the minutes or records of this court.

WHITTLE & GUSTIN,
SAM'L HALL,
Attys. for Defts.

We acknowledge service of the above, May 1st, 1871.

HUNTER, JEMISON & NISBET,
Attys. for Plff.

This motion to set aside the fi. fa. & judgment refused and not allowed, May 1st, 1871.

C. B. COLE,
Judge S. C.

Denial of verdict, etc., and objections to motion.

DANIEL F. GUNN
vs.
JAMES H. WOOLFOLK, THOMAS J. WOOLFOLK
John W. Woolfolk, security.

} Complaint, in Bibb superior court, & motion to enter verdict on the minutes nunc pro tunc.

29 And now comes defendants in the above case, and deny that any verdict was ever rendered in said case, & deny that the entry on the declaration in said case, purporting to be a verdict, was, in fact, the verdict of any jury of said court, duly rendered in said case; all which defendants are ready to verify, & pray judgment of the court.

Said defendants further object to the granting said motion, because they say the said James H. Woolfolk has been duly declared a bankrupt in the district court of the United States for the southern district of Georgia, & that proceedings are now pending in bankruptcy in said court against him, & they claim that no judgment or order can be taken in this court affecting him while said proceedings are pending in said bankrupt court.

Defendants further state, in opposition to said motion, that since the term of the court at which a verdict in said case is alleged to have been rendered, & the application to enter the same on the minutes nunc pro tunc, innocent third parties, to wit, I. C. Plant & Son, & others, have obtained bona-fide liens on the property of these defendants, and innocent parties have become bona-fide creditors of these defendants on the faith of said property, and their rights may be injuriously affected by said nunc pro tunc order.

WHITTLE & GUSTIN,
Defts. Attys.

These objections disallowed & overruled, May 1st, 1871.

30 *Plaintiff's judgment nunc pro tunc.*

Bibb superior court, April term, 1871.

Whereupon, it is considered by the court that plaintiff do recover of the defendants, T. J. Woolfolk, J. H. Woolfolk, & J. W. Woolfolk, security, in addition to the sum of eleven thousand two hundred and twelve dollars principal, interest on said sum of $11,212.38 from the fourteenth

day of April, eighteen hundred and sixty, (A. D. 1860,) until paid. This judgment for interest to take effect now for then.

Judgment signed this 12th day of June, 1871.

JEMISON & NISBET,
Plff's Attys.

"Common law docket, May term, 1866.

"DANIEL F. GUNN
"*vs.*
"THOMAS J. WOOLFOLK, JAMES H. WOOLFOLK, John W. Woolfolk, security." } Complaint.

This entry, viz, "Nov. T., 1866, verdict," in the handwriting of the presiding judge.

31 *Clerk's certificate.*

GEORGIA, *Bibb County:*

CLERK'S OFFICE, SUPERIOR COURT.

I hereby certify that the foregoing twenty-four pages contain a full, true, and complete copy and exemplification of all the proceedings had in the case wherein Daniel F. Gunn is plaintiff, and Thomas J. Woolfolk, James H. Woolfolk, & John W. Woolfolk, security, are defendants, in said court, as the same appears from the records and files of said court.

Given under my hand & seal of office, this 19th day of January, 1872.

[L. S.] A. B. ROSS,
Dep. Clerk.

Judge's certificate.

GEORGIA, *Bibb County:*

I, Carleton B. Cole, sole presiding judge of the superior court in & for said county, hereby certify that A. B. Ross, whose genuine signature I recognize to the foregoing certificate, is, and was at the time of signing the same, deputy clerk of said court, and that his attestation is in due form.

Given under my hand, officially, this 22nd day of Jan'y, 1872.

C. B. COLE,
Judge S. C.

32 *Remitter from Georgia supreme court.*

SUPREME COURT OF THE STATE OF GEORGIA,
Atlanta, Ga., March 12th, 1872.

The honorable supreme court met pursuant to adjournment. Present, their honors Hiram Warner, chief-justice, H. K. McKay & W. W. Montgomery, judges.

THOMAS J. WOOLFOLK ET AL., PLFFS. IN error,
versus
DANIEL F. GUNN, DEFT. IN ERROR.

This case came before the court upon a transcript of the record from the superior court of Bibb County, and, after argument had, it is considered & adjudged by the court that the judgment of the court below be affirmed, provided that the defendant in error shall, upon entering

the remitter in his case upon the minutes of the superior court, as the judgment thereof, file thereon an agreement that nothing in the judgment allowing these amendments shall interfere with the rights of the security hereafter to plead any release or discharge of himself which the law may impose, growing out of any damages coming to him from the failure of the plaintiff in the suit to have his verdict entered at the proper time.

Warner, C. J., not presiding.

33 *Bill of costs.*

Entering case, $6.00; recording opinion, $6.00; remitter, $2.00; sheriff fee, $1.25—$15.25.

Clerk's certificate.

SUPREME COURT OF THE STATE OF GEORGIA,
Clerk's Office, Atlanta, March 14, 1872.

I certify that the above is a true extract taken from the minutes & that Whittle & Gustin paid the above bill of cost.

Given under my hand & seal of office.

[L. S.] Z. D. HARRISON,
Clerk.

Agreement of counsel as to plea of security.

It is agreed that nothing in the judgment allowing these amendments shall interfere with the rights of the security hereafter to plead any release or discharge of himself which the law may impose, growing out of any damage coming to him from the failure in the suit to have his verdict entered at the proper time.

March 15th, 1872.

JEMISON & NISBET,
Attys. for Deft. in Error.

Order on remitter.

It is ordered by the court that the remitter in this case be entered on the minutes of this court and that the judgment of the
34 supreme court in this case be made the judgment of this court, and that the foregoing agreement of the counsel of the deft. in error, which is entered on said remitter, be also entered on the minutes.

C. B. COLE,
Judge S. C.

Clerk's certificate.

GEORGIA, *Bibb County:*

CLERK'S OFFICE SUPERIOR COURT,
March 28th, 1872.

I hereby certify that the above & the two foregoing pages contain a full, true, & complete copy of the remitter from the supreme court of said State in the case of "Thomas J. Woolfolk et al., plffs. in error, versus Daniel F. Gunn, deft. in error," with the entries thereon, in said superior court, as the same appears from the records & files of said court.

Given under my hand & seal of office.

[L. S.] A. B. ROSS,
D. Clk.

(Endorsed:) Georgia, Bibb superior court. D. F. Gunn, guardian, vs. Thos. J. Woolfolk et al. Transcript of record. Jemison & Nisbets.

35 *Separate answer of Daniel F. Gunn, guardian.*

In equity, in the 5th circuit court of the United States for the southern district of Georgia.

I. C. PLANT & SON
vs.
DANIEL F. GUNN, GUARDIAN, &c., JOSEPH E. Murray, trustee, &c. } Bill for injunction, &c.

Said Gunn, guardian, defendant, saving & reserving to himself all benefit of exception to the manifold errors & uncertainties in said complainants' said bill contained, for answer thereto, or to so much thereof as he is advised is material for him to answer unto, answering, says:

Respondent admits that the complainant may have obtained a judgment of foreclosure against said James H. Woolfolk, at place & for the amount charged in said bill, but at the October term, 1869, & not 1868, as charged, & the same was a foreclosure on real estate, as charged. But respondent avers that the debt to secure which said mortgage was given was not the individual debt of said James H. Woolfolk but
36 was the partnership debt of Woolfolk, Walker & Co., which firm was composed of James H. Woolfolk, Joel A. Walker, & John A. Hafer, as shown by the copy mortgage attached to said bill; and the real estate upon which the mortgage was foreclosed was the personal, individual estate of said James H. Woolfolk, & in no manner connected with said partnership.

Respondent admits that said Woolfolk, with his copartners, was adjudged bankrupt on the fifteenth of June, 1869, & that said Murray was appointed trustee of the estate of said bankrupts, as charged in said bill, & that said real estate, mortgaged as aforesaid to complainants, was sold & the proceeds deposited with complainants to be held by them at a certain rate of interest subject to the order of the bankrupt court as to the proper distribution thereof, & that said Gunn, guardian, claims the moneys deposited with complainants, to wit, the sum of five thousand eight hundred & thirty-four $\frac{50}{100}$ dollars should be applied to the payment of a judgment obtained by him at the November term, 1866, of the superior court of Bibb County, in said State, for eleven thousand two hundred & twelve dollars & thirty-eight cents, principal debt, besides interest, against Thomas J. Woolfolk, James H. Woolfolk, principals, & John W. Woolfolk, as security, & avers that at the November term, 1866, a verdict was regularly rendered by a jury empanelled & sworn in the case on the original declaration filed therein & signed by the foreman of the jury in favor of said Gunn, guardian, against said defendants as aforesaid, for the sum aforesaid, & which verdict was regularly returned into court & filed in the clerk's office at said
37 term, & entered upon the judge's docket in the handwriting of the then presiding judge, & at the same term a judgment was regularly entered on said verdict; but afterwards, by omission of the clerk, respondent admits the same was not entered on the minutes of the court, & respondent avers that the validity of the verdict was perfect; & respondent admits that at a subsequent term, to wit, the April term, 1871, said omission having been discovered, the presiding judge, on motion, ordered said verdict to be entered on the minutes nunc pro tunc, & which was accordingly done.

Respondent admits that a bill of exceptions was filed & a writ of error sued out & is now pending in the supreme court of said State on the

question of the validity of the entering of the verdict on the min utes nunc pro tunc, but respondent avers that no error was committed by said presiding judge in that regard, as the supreme court of Georgia have in many cases ruled & decided that such an order is legal & proper; that such verdict was in no wise affected by the omission of the clerk, & particularly in the cases of Hall vs. The State, 3rd Kelly 18; Davis vs. Barker, 1 Kelly 539; Bell vs. Blake, 13 Ga., 223; & Pierce vs. Bruce & Co., 38 G., 444. And respondent further avers that defendants to said judgment, in suing out said writ of error, did not file bond & procure supersedeas & suspension of the further action of respondent in said judgment, and respondent's right to further proceedings is in no manner affected by said writ of error.

Respondent admits that, at the date of the judgment obtained by said Gunn against said Woolfolk, that said Woolfolk owned some
38 lands, but what the lands were respondent does not know, except as hereinafter stated, but believes that said Woolfolk sold the same to purchasers, who claimed to be bona fide purchasers for value, before he was adjudged a bankrupt; and respondent is advised and believes that, at the time said Plant took said mortgage, he had special notice that he took it subject to said judgment of Gunn, guardian, obtained at the November term, 1866, of Bibb superior court; & that said Woolfolk returned no lands in his schedule except those out of which the funds were realized, except as hereinafter mentioned.

Respondent further avers that, after the obtaining of said judgment against said Woolfolk and before said bankruptcy, said Woolfolk sold divers of the lands held by him, & on which said judgment was a lien, to sundry persons, for their full & fair value, at private sale, & that the proceeds of sale were applied to the part extinguishment of said judgment by said Woolfolk, & that, by reason of such application, respondent released said lands from the lien of said judgment, as follows, to wit: Lots T & W, as described in deed made December 7th, 1868, by James H. Woolfolk & Thomas J. Woolfolk to John D. Thorp, for the sum of six hundred dollars, which amount was applied to said judgment of that date; also lot number 10, in the 8th district of originally Baldwin, now Twiggs & Jones County, containing 202½ acres, for the sum of twenty-two hundred dollars, which amount was credited on said judgment dated 20th of January, 1869, as per of deed said James H. Woolfolk to Herbert Reynolds.

39 Respondent is advised & believes that some time within four months anterior to the judgment of bankruptcy against said James H. Woolfolk, he conveyed to his brother, Lowell Woolfolk, of the State of Alabama, from two to three thousand acres of land situate in the county of Jones; but whether said conveyance was bona fide and for full value respondent does not know & has no means of knowing, except the fact that he did not return the same in his schedule in bankruptcy, and that an issue was made as to that sale before the register, & that subsequently a bill was filed by said Murray, trustee, in the 5th circuit court of the United States for the southern district of Georgia, to test the validity of said sale, & which bill respondent is advised is still pending undetermined in said court; & respondent does not know of any other lands of James H. Woolfolk subject to his judgment, except about 200 acres embraced in his schedule, unsold, of the value of five or six hundred dollars, which said acres of land are not exempted by the trustee, & which are the Blue Brank track in Bibb County, as charged in the bill, all the balance of the lands in the schedule having been exempted to him by the trustee under the operation of the bankrupt act.

Respondent further avers that after applying the money in controversy to the payment of the judgment, the balance still due would be much more than could be realized from the sale of any remaining lands that he may have owned at the date of said judgment.

Respondent admits that John W. Woolfolk, surety of said James H. Woolfolk in said judgment, may own some lands which are sub-
40 ject to said judgment as charged in the bill, but respondent avers that the property of James H. Woolfolk, by the laws of Georgia, is to be first exhausted before proceeding upon the property of the surety. The right of John W. Woolfolk, surety, to have the property of the principal applied to the discharge of said judgment is paramount to that of complainant, who took his mortgage with full knowledge of the fact of said judgment and the right of said surety.

Respondent further avers that the judgment of bankruptcy against said James H. Woolfolk, the date of which was the fifteenth day of June, 1869, was anterior to the foreclosure of complainant's said mortgage, at the October term, 1869, of the superior court of Jones County, in said State, & that complainant well knew of such bankruptcy at the time of such foreclosure; & the fact of said bankruptcy, respondent is advised and believes, was also known to the presiding judge at the time of such foreclosure.

Respondent further advised & believes that said complainant's said mortgage was obtained under duress; that the facts, as he understands them, are these: that Woolfolk, Walker & Co. owed to I. C. Plant & Son, complainants, a draft drawn by R. F. Woolfolk, accepted by Woolfolk, Walker & Co., being one of the drafts for which said mortgage was given, & for the payment of which a considerable quantity of cotton in the warehouse of Woolfolk, Walker & Co.; & that Woolfolk, Walker & Co. sold the said cotton, & did not apply the proceeds of the sale to the payment of the draft due to Plant & Son, complainants, by which Plant & Son claimed that James H. Woolfolk and others
41 had been guilty of larceny after trust, in having failed to apply the said proceeds to the payment of said draft; & that said Plant threatened to prosecute James H. Woolfolk unless he would give to complainants the mortgage in controversy; that said Woolfolk executed said mortgage to prevent said prosecution; and respondent further avers that on a trial of a suit on said draft, in which Plant & Son were pltffs. & R. F. Woolfolk defendant, at the April term, 1871, of said superior court for the county of Bibb, said Plant testified in substance to the facts as above stated, & that James H. Woolfolk, being then & there present, and his attention being called to said testimony, admitted that Plant's statement as to the manner of procuring the said mortgage was true.

In answer to the first interrogatory, respondent admits that the judgment of said Gunn, guardian as aforesaid, was entered on a verdict, which verdict was not entered on the minutes of the court until April term, 1871, thereof; and admits that a bill of exceptions is now pending in the supreme court allowing it to be entered on the minutes nunc pro tunc. Respondent has already fully stated how that occurred, & the fact that the said verdict was filed in the clerk's office at the time at which it was rendered, & was entered upon the docket of the judge in his own handwriting, & the fact that the validity of the verdict was in no way effected by such clerical omission.

In answer to the 2nd interrogatory, respondent says that said
42 James H. Woolfolk did own lands at the time said judgment was obtained against him other than those mortgaged to complainant.

But whether said lands are now subject to the payment of said judgment is a question which can only be determined after long & expensive litigation, there being now pending, as already stated, a bill filed by said trustee in the 5th circuit court of the United States for the southern district of Georgia; & further says that the lands, except those in the hands of the trustee, are in the hands of third persons, who hold the same adversely to the claims of the creditors of James H. Woolfolk; & further says that said lands were, if subject to respondent's judgment, *are* not sufficient to pay said judgment; & respondent offers to do equity in this regard, and if complainants will pay him the amount due on his judgment he will transfer the same to said complainants, subrogating thereto all his rights in the premises.

Respondent, having fully answered said bill, or to so much thereof as is material for him to answer to, prays that he may be discharged from the same with his reasonable costs.

B. HILL & R. W. JEMISON,
Defendant's Solrs.

GEORGIA, *Bibb County:*

Personally came Daniel F. Gunn before me, the defendant in the above-named bill, who, first being duly sworn, on oath says that the facts stated in his above & foregoing answer, so far as they re-
43 late to the acts & deeds of himself, are true of his own knowledge, & so far as they relate to the acts & deeds of others he believes them to be true.

D. F. GUNN.

Sworn to and subscribed before me this the 20th day of January, 1872.
W. K. D'GRAFFENREID,
Notary Public, Bibb County.

(Endorsed:) I. C. Plant & Son vs. Daniel F. Gunn, g'd'n, & Joseph E. Murray, trustee, &c. Answer of Gunn, g'd'n, to bill for injunction. B. Hill, R. W. Jemison.

Separate answer of Joseph E. Murray, trustee, &c.

This defendant, saving and reserving to himself now and at all times hereafter all benefit of exception to the manifold errors and uncertainties in said bill of complaint contained, for answer thereto, or to so much thereof as he is advised is material or necessary for him to answer unto, answering saith:

44 Respondent admits that complainants obtained a judgment of foreclosure against James H. Woolfolk at the Oct. term, 1869, of the superior court of Jones County, and not at the Oct. term, 1868, of said court, as charged; but respondent states that said judgment of foreclosure was obtained several months after said James H. Woolfolk had been adjudged a bankrupt; and that this fact was known to complainants and to their counsel and to the presiding judge of said court. He further states that the debt secured by said mortgage was a debt of the firm of Woolfolk, Walker & Co., and not the individual debt of James H. Woolfolk, the mortgagor; and that the real estate upon which said mortgage was foreclosed was the individual property of the said James H. Woolfolk, and so returned by him in his schedule in bankruptcy; and this respondents, representing the creditors of said James H. Woolfolk, as well as the creditors of the firm of Woolfolk, Walker & Co.,

respectfully submits that said mortgage should not be satisfied out of the individual property of the said James H. Woolfolk to the exclusion of his individual creditors, and he states that they will be excluded if the lien of complainant's mortgage is recognized.

Respondent further states that he is advised and believes that the said mortgage was obtained by complainants from the said James H. Woolfolk under duress, said complainants threatening the said Woolfolk that if he did not secure certain indebtedness of his firm of Woolfolk, Walker & Co. to complainants, for which cottons in the
45 warehouse of the said Woolfolk, Walker & Co. had been pledged and afterwards otherwise appropriated, they would proceed against him for larceny after a trust delegated, and the said James H. Woolfolk executing said mortgage, as he has stated, under this threat, to avoid a prosecution; and respondent submits that the lien of said mortgage so obtained ought not to be recognized so as to give a preference to the said I. C. Plant & Son, either against the individual creditors of James H. Woolfolk or the creditors of the firm of Woolfolk, Walker & Co.

Respondent, further answering, says that the said James H. Woolfolk did not return any lands in his schedule, which have come into his possession as trustee, except the plantation mortgaged to complainants, certain lots which have been set apart for him as exempt, and a tract of land in Bibb County, worth about eight hundred dollars; that the lands referred to in amendment to their said bill were not returned by said James H. Woolfolk in his schedule, have never been in the possession or control of respondent, and it is doubtful that they ever will be.

In reference to these lands respondent states that James H. Woolfolk executed a deed for them to his brother, Sowel C. Woolfolk, of Russell Co., Alabama, in February, 1869, and that it was this conveyance which induced his creditors to proceed against him in bankruptcy; that said Sowel C., after the appointment of respondent as trustee, refused to deliver said lands to him, but held them, and continues to hold them, by his tenants, Thomas J. Woolfolk and Henry Crowell, and has obliged this respondent to file a bill to obtain possession of said
46 lands, which is now pending in the fifth circuit court of the United States for the southern district of Georgia.

This respondent, further answering, admits that the mortgaged premises were sold, and that the proceeds were deposited and are now held as stated in complainant's bill, and that said Danl. F. Gunn, guardian, claims that the said proceeds should be applied to the judgment which he holds against Thomas J. Woolfolk, James H. Woolfolk, & John W. Woolfolk, as stated in complainant's bill.

In reference to said judgment, this respondent states that the facts connected with said judgment are, as he understands them, correctly stated in complainant's bill. In addition to those facts, this respondent states that he is informed, and believes, that James H. Woolfolk was simply a security with his brother, John W. Woolfolk, for their brother, Thomas J. Woolfolk, in the debt upon which the judgment of the said Gunn, guardian, is based; that said John H. Woolfolk resides in Houston County in this State, and is solvent, and that said order by which said verdict and said judgment were entered upon the minutes of Bibb superior court was made about twelve months after said James H. Woolfolk was adjudged a bankrupt. Under these facts he submits that the judgment of the said Gunn, guardian, is not a valid judgment under the lien, of which he can have any preference in the administration of the assets of James H. Woolfolk, and that if it be held to be a valid

judgment, the said James H. Woolfolk's estate in bankruptcy is liable for
for only one-half of the amount due upon said judgment, or if liable
47 for the whole, that this respondent has the right to claim of the
said John W. Woolfolk, the co-surety of the said James H., repayment of one-half of any sum which he may be compelled to pay upon the same—said Thos. J. Woolfolk, principal in said indebtedness, being confessedly insolvent—and he asks that before any order or decree is made in this case, which shall fix the liability of the said James H. Woolfolk under said judgment, that the said John W. Woolfolk may by proper order be made a party to this proceeding.

Respondent insists that neither of the said complainants under their mortgage, or Danl. F. Gunn, guard'n, under his judgment, have any lien which should give to either of them priority in the distribution of the assets of James H. Woolfolk, over his general creditors, whose claims amt. to the large sum of dollars. Respondent, answering the interrogatories which he is specially required to answer, admits that the judgment of the said Gunn was entered on what purported to be a verdict, but which said verdict was not entered upon the minutes until years afterward, under an order nunc pro tunc, and that exceptions have been taken to said nunc pro tunc order, which are now pending in the supreme court of Georgia. He further admits that the said James H. Woolfolk owned lands at the date of said judgment, amply sufficient to satisfy the same, but that he does not admit that the said James H. Woolfolk, or this respondent as his trustee, now holds lands, exclusive of those mortgaged to complainants, sufficient to satisfy said judgment.

And, having fully answered, respondent prays that he may be hence dismissed with his reasonable costs.

48 NISBETS & JACKSON,
Solrs. for J. E. Murray, Trustee.

GEORGIA, *Bibb County:*

Personally came Jos. E. Murray, one of the defendants in the above-stated bill, as trustee in bankruptcy of Woolfolk, Walker & Co., and of the individuals composing that firm, who, being duly sworn, deposeth and saith that the facts stated in his above and foregoing answer, as far as they relate to his act or deed, are true of his own knowledge, and as far as they relate to the acts or deeds of others, he believes them to be true.

J. E. MURRAY.

Sworn to and subscribed before me this 22nd day of January, 1872.
LORENZO RIPLEY,
Notary Public.

(Endorsed:) In 5th circuit court of the U. S. for so. dist. of Ga. I. C. Plant & Son *vs.* Dan'l F. Gunn, guardian, & Jos. E. Murray, trustee. Answer of Jos. E. Murray, trustee. Nisbets & Jackson, solicitors.

49 *Affidavit of Jos. E. Murray, trustee.*

GEORGIA, *Bibb County:*

Personally came Joseph E. Murray, who, on oath, says that he is trustee of the estate of James H. Woolfolk, who, together with his firm, were duly adjudged bankrupts; that as trustee aforesaid he sold all of the lands surrendered by said James H., except the "Blue Branch" tract of land of two hundred two & half acres and so much of his lands as he set aside as exempt under the bankrupt act; that said Blue Branch

tract will not probably sell for more than five or six hundred dollars; that suit is now pending in the United States circuit court at Savannah, the object of which is condemn as the property of said James H. certain lands lying in the county of Jones, in said State, which this deponent, as trustee aforesaid, in his said suit, avers and believes were sold contrary to the provisions of the bankrupt act, and are subject to the debts of said James H. Woolfolk.

J. E. MURRAY.

The within and foregoing affidavit sworn to & subscribed before me this 22 day of Jany., 1872.

[L. S.] GEO. S. OBEAR,
Notary Public.

(Endorsed:) U. S. circuit court. J. C. Plant & Son *vs.* Gunn, gdn., & Murray, trustee. Injunction, &c. Affidavit of Murray, trustee.

50 *Injunction bond.*

STATE OF GEORGIA,
County of Bibb:

Know all men by these presents that we, Increase C. Plant, Morris Ketchum, and Robert H. Plant, partners, using the firm-name of I. C. Plant & Son, and W. W. Wrigley, of said county, surety, acknowledge ourselves held & bound to Daniel F. Gunn, guardian, in the sum of five thousand dollars, for the payment of which we bind ourselves, our heirs, executors, & administrators, jointly & severally, firmly by these presents, sealed with our seals & dated this day of March, 1872.

The condition of this bond is such that whereas the said firm of I. C. Plant & Son have prayed for an injunction, in a bill returnable to the fifth circuit court of the United States for the southern district of Georgia, against said Gunn, guardian, & Joseph E. Murray, trustee, &c., to restrain said Gunn, guardian, from proceeding with the judgment as in said bill stated, & the court having granted injunction on complainants in said bill giving bond, to be approved by a United States court commissioner: Now, should said Plant & Son pay all damages that said Gunn, guardian, may sustain by reason of said application for injunction, then this bond to be void; else to remain of force.

Attested and approved by—

51 I. C. PLANT & SON. [L. S.]
W. W. WRIGLEY. [L. S.]

J. CLARKE SWAYZE,
U. S. Commissioner So. Dist. of Ga.

(Endorsed:) U. S. circuit court so. dist. of Georgia. In equity. I. C. Plant & Son, complt., and Daniel F. Gunn, guardian, &c., and Joseph E. Murray, trustee, &c. Injunction bond. Filed April 1, 1872. Jas. McPherson, clerk. Lanier & Anderson, sols. for complts.

Amendment to bill.

The following-described lands having been omitted to be inserted in the foregoing bill as lands belonging to the said James H. Woolfolk at the time the said judgment against him in favor of said Daniel F. Gunn, guardian, was obtained, complainants now amend their said bill by adding said lands in addition to those described is said bill, as follows, to wit: All those lots & parcels of land, numbers one hundred

& fifty-nine, one hundred & fifty-eight, one hundred and fifty-
52 four, one hundred & thirty-four, one hundred & thirty-three, one hundred & sixty, one hundred & sixty-one, one hundred & thirty-one, one hundred & thirty-two, one hundred & fifty-five, & sixty-two acres of number one hundred & eighty-one, all lying in the sixth district of Jones County, State of Georgia, as will more fully appear by the deed of conveyance from Thomas Woolfolk to said James H. Woolfolk, & containing one thousand eight hundred acres in all.

LANIER & ANDERSON,
Complts.' Sols.

Affidavit of James H. Blount.

GEORGIA, *Bibb County:*

Before me, the undersigned, personally came James H. Blount, of said county, who, being duly sworn, says that the body of lands described in the foregoing amended bill as eighteen hundred acres are worth, in his opinion, at least seven dollars per acre, or twelve thousand six hundred dollars in all. Deponent states that he is acquainted with the said lands.

JAMES H. BLOUNT.

Sworn to & subscribed before me this 22 day of January, A. D. 1872.
WM. K. DE GRAFFENREID,
Notary Public, Bibb County.

53 *Consent as to amendment.*

We consent that this amendment be used as though in the original bill.
Jany. 22d, 1872.

NISBETS & JACKSON,
Attys. for Trustee & General Creditors.
B. HILL.

(Endorsed:) U. S. circuit court so. dist. of Georgia. In equity. I. C. Plant & Son, complainants, and Daniel F. Gunn, guardian, &c., and Joseph E. Murray, trustee, &c. Amendment to bill. Affidavit of James H. Blount, and consent of parties, &c. Filed March 28th, 1872. Jas. McPherson, clerk. Lanier & Anderson, sols. for compl't.

Second amendment to bill.

And now come complainants &, by leave of the court first had, make an amendment to their bill pending their application for injunction, as follows:

54 Your orators allege that, according to their knowledge, information, and belief, there are no assets or effects of the said firm of Woolfolk, Walker & Company to pay any part of the debts of said firm, & that their schedules, which were of file in the district court for the southern district of Georgia, or with A. G. Murray, register, will, when found, show no such assets or effects. And orators also allege that neither Joel A. Walker nor John A. Hafer, who were two of the partners of said firm, neither had nor rendered in their schedules, at the time of their going into bankruptcy, nor since, any assets or effects wherewith to pay any part of their debts. Also, that complainants, through their counsel, have made diligent effort, both by application to the clerk of the said district court at Savannah and to the said register at Griffin, Georgia, to obtain & to attach hereto copies of the said several schedules, showing the said allegations to be true, & have been

unable to do so, for the reason that the originals, as reported by those officers, are not of file in their offices, & complainants have not be' able to find them elsewhere, & do not know where they are to be found. Complainants allege further that when they accepted from the said James H. Woolfolk his said mortgage for the securing the payment of their said debt, they had no knowledge of any judgment against said James H. Woolfolk in favor of said Gunn, and were greatly surprised when, some time thereafter, they were informed such judgment was claimed to exist by said Gunn, & as having a lien prior to the mortgage of complainants on the property mortgaged.

LANIER & ANDERSON,
Complts.' Sols.

55 UNITED STATES OF AMERICA,
Southern District of Georgia:

Before me, the undersigned, personally came Increase C. Plant & Robert H. Plant, one of the firm of I. C. Plant & Son, complainants in the foregoing amended bill, who, being duly sworn, saith that the statements made in the foregoing amendment are true to the best of his knowledge & belief so far as they depend on information derived from others, & so far as they concern his own act or deed are true of his own knowledge.

INCREASE C. PLANT.
R. H. PLANT.

Sworn to & subscribed before me this 3d day of February, A. D. 1873.

J. CLARKE SWAYZE,
U. S. Commissioner So. Dist. of Ga.

Acknowledgment of service.

Service hereof duly acknowledged.
Feby. 3d, 1873.

R. W. JEMISON,
Atty. for D. F. Gunn, Guardian.

(Endorsed:) Plant & Son vs. Gunn et al. U. S. circuit court southern district. Amendment to bill. Lanier & Anderson.

56 *Answer of defendant, David F. Gunn, guardian, to amended bill.*

The deft., Gunn, guardian, for answer to the amendment to complainants' bill, says:

It is not true as alleged by plffs. that the firm of Woolfolk, Walker & Co., complainants' debtors, did not surrender any assets or effects when said Woolfolk, Walker & Co. were forced into bankruptcy by petition of their creditors, for deft. is informed and believes that it is a fact, shown by the schedule, of at least one of said firm, to wit, Joel A. Walker, that the "books & accts." of his said firm were surrendered, but that he was unable to state amt. or value of said book accts. because at the time they were in the hands of the U. S. marshal. And it further appears by the schedules of said Walker that he surrendered of his separate & individual assets 242½ acres of unencumbered land and $675 worth of personal property. And deft. further says that, not having access to the schedules of the other partners, Woolfolk & Hafer, he is unable to show to this court what exhibit was made by them of the assets of said partnership.

But this deft. further avers that even if true as alleged by complainants that there are no available assets belonging to said firm of Woolfolk, Walker & Co., still such a lack or want of partnership assets cannot effect the rights of deft. in the premises, for the reason that deft.'s claim is a debt due by Woolfolk individually, and must be paid
57 out of the separate & individual property of said Woolfolk before any of the separate property of said Woolfolk can be diverted to pay any of the partnership debts due by Woolfolk, Walker & Co., of which debts the claim held by complainants is one.

Deft. reiterates the averment in his original answer to complainants' original bill of complaint; that is, that complainants had special notice of the existence of deft.'s judgment & prior lien at the time Woolfolk executed mortgage in their favor; deft. begs leave to refer to (as part of this answer) the affidavit of James H. Woolfolk, now already filed in this case, wherein the said Woolfolk swears positively that he did make known to I. C. Plant, one of the plffs., the fact of the prior judgment-lien of this deft.

Deft. would not be understood as saying, or even believing, that the said I. C. Plant would knowingly misstate a fact, but thinks that the fact of Woolfolk having so notified him has escaped the memory of said Plant; but deft. avers, as he is informed & believes, that it is nevertheless true that he was so notified by Woolfolk.

And deft. further avers that whether plffs. were or were not specially notified by said Woolfolk, is not material, because the judgment of the court itself is notice.

The proceedings were publicly pending, coram judice, verdict obtained, & judgment regularly entered up, (at least for the principal of the debt at date of judgment,) and fi. fa. issued thereon; nor will plffs. be allowed to plead ignorance of facts shown by the records of the
58 court. In their original bill, plffs. complained of the sufficiency of the judgment of deft. because of the irregularity of the clerk in failing to enter the verdict upon his minutes. When their bill was first presented to this court, the matter of the sufficiency of deft.'s judgment because of said omission by the clerk had been affirmed by the circuit court and was under review in the supreme court of Ga. Their decision, ("Thomas J. Woolfolk *vs.* Gunn, guardian,") as shown by transcript of file in this case, is referred to as part of this answer, in which they held the judgment valid & of full force, reserving only to the security the right to be heard on the amended judgment, adding interest from date of note to date of judgment, said interest having been omitted in entering up the original judgment rendered in the case.

R. W. JEMISON,
Solicitor for Gunn, Guardian.

GEORGIA, *Bibb County:*

Before me, the undersigned commissioner of the United States for the southern district of said State, personally came Danl. F. Gunn, who, on oath, says that the statements made in the above answer, so far as made on his own knowledge, are true, & *and* so far as made on information of others he believes to be true.

D. F. GUNN.

59 Sworn and subscribed before me this third day of March, 1873.

J. CLARKE SWAYZE,
U. S. Commissioner.

(Endorsed:) U. S. circuit court for so. dist. of Ga. I. C. Plant & Son vs. Danl. F. Gunn, guar., et al. Bill for injunction, &c. Answer to amended bill. R. W. Jemison, sol. for deft.

Admissions to dispense with exemplifications of State court records.

IN THE MATTER OF I. C. PLANT & SON
vs.
R. A. NISBET, TRUSTEE, &C., AND OTHERS, in the U. S. circ. court at Savannah, Georgia.

It is admitted that I. C. Plant & Son have duly proven their debt in the bankrupt court; and that said debt was a partnership debt due by Woolfolk, Walker & Co., of which firm James H. Woolfolk was a member, and not the individual debt of said James H., and that the property mortgaged to said I. C. Plant & Son was the individual property of the said James H., and not the partnership property of said Woolfolk, Walker & Co.; and that said land was sold at bankrupt sale, & that under an agreement with the said trustee in bankruptcy said I. C. Plant & Son hold the proceeds of said sale at a stipulated rate
60 of interest, subject to the decision of the bankrupt court as to the proper distribution thereof, and that their mortgage was foreclosed in the superior court of Jones County, Georgia, at the fall term 1869, & for the amt. stated in their bill. Said foreclosure was subsequent to the date at which said James H. had been adjudged a bankrupt on petition of the creditors of Woolfolk, Walker, & Co., filed in the bankrupt court, but before the mortgagees proved their debt, and that the judge of said superior court permitted said judgment of foreclosure to be made final after he had been informed of said adjudication of bankruptcy, and that on that ground said foreclosure was objected to by attorneys of other creditors of said James H. Woolfolk.

This admission is thus made to dispense with the production of exemplifications from the records of the court in relation to matters admitted.

Macon, Ga., Nov. 22, 1873.

R. W. JEMISON,
Gunn's Solicitor.
LANIER & ANDERSON,
For Plant & Son.

(Endorsed:) I. C. Plant & Son vs. Nisbet, trustee, &c., and others. Admissions, &c.

61 In equity in the fifth circuit court of the United States for the southern district of Georgia.

I. C. PLANT & SON
vs.
ROBERT A. NISBET, TRUSTEE IN BANKRUPTCY of estate of James H. Woolfolk, bankrupt, et al.

Interrogatories for Increase C. Plant & Robert H. Plant, material witnesses for complainants in the above-stated case, & who reside in Macon, Georgia, more than one hundred miles from the city of Savannah.

Interrogatories.

Inty. 1st. Look on the annexed mortgage & state the circumstances under which it was executed, and whether or not it recites correctly the indebtedness it was given to secure & the consideration thereof.

Inty. 2nd. State whether any cotton had been pledged by Woolfolk, Walker & Company to secure said indebtedness; &, if so, what became of said cotton? If any was pledged, state who held it at the time; where it was to remain deposited; & whether you, or either of you, made any effort, &, if so, what, to have said cotton applied to the payment of said indebtedness, & whether you succeeded or not. If you failed, state the reason.

62 Inty. 3rd. State whether you used or failed to use all practicable diligence in trying to get the cotton referred to applied to said indebtedness.

Inty. 4th. When said mortgage was executed did you or either of you have any knowledge or notice of any judgment then existing in favor of the defendant, Gunn, as guardian, &c., against said Woolfolk? If so, how & when did you acquire such notice or knowledge?

Inty. 5th. In what way did said indebtedness by Woolfolk, Walker & Co. to complainants arise? What was the consideration of said indebtedness? Why was the additional security required by said mortgage required & given? Was it because of the complainants' failure to get the cotton pledged for the payment, or for some other cause?

Inty. 6th. Who composed the firm of Woolfolk, Walker & Co.? If you state that Joel A. Walker & John A. Hafer were members of that firm, state whether either of them has ever paid complainants anything on account of said indebtedness, & whether they or either of them have any property or means, so far as you know, for the payment of complainants or any other of their creditors?

Inty. 7th. Do you or either of you know of any property or assets other than the individual property and assets of James H.
63 Woolfolk, out of which complainants can get payment of any part of the indebtedness which said mortgage was given to secure? If so, state what.

Inty. 8th. Who was the responsible member of the said firm of Woolfolk, Walker & Co.? Were all the members of said firm men of capital or not? State anything further you may know material in this case.

LANIER & ANDERSON,
Complts.' Sols.

Acknowledgment of service.

Due and legal service of the within intys. acknowledged. Copy & further notice waived. Let the testimony be taken without commissioner. Nov. 17, 1873.

R. W. JEMISON,
Sol. for Gunn, Guardian.

Cross-interrogatories.

X 1st. Was not the land described in said mortgage the individual property of James H. Woolfolk, the mortgagor, and was not the debt (to secure which said mortgage was given) *the debt* due by Woolfolk, Walker & Co., of which firm said James H. was a partner, & not the individual debt of said James H., and had not said debt been con-
64 tracted by said firm some time (state how long) before said mortgage was given? Was not said mortgage executed after maturity of said debt & after you had failed to collect the same of said firm?

X 2nd. In order to procure said mortgage, did not you, or any of you, threaten said James H. with a criminal prosecution, you or one of

you alleging that said Woolfolk, Walker & Co. had committed a criminal offence in a certain cotton transaction, connected with said debt of said firm, and did not one or both of you say to said James H. that if he did not execute said mortgage you would send him to the penitentiary, (or words to that effect;) and did not said James H. in consequence of said threat execute said mortgage, and did not your senior (I. C.) while on the witness-stand in Bibb superior court on the 28th April, 1871, on the trial of your case against R. F. Woolfolk, swear that such was the fact, and that if said James H. had not given him said mortgage that he would have sent him to the penitentiary, (or words that effect?) State fully what was sworn to by said I. C. at that trial.

X 3rd. Was not said mortgage signed in your present office, on Cherry street, in the city of Macon, in the rear of the First National Bank, and did you not call in Thomas J. Woolfolk, brother to said James H., and who was or had been executor of their father's will, and inquire of him whether said James H. had title to the land proposed to be mortgaged, & whether the same was free from incumbrance,
65 and did not said Thomas J. say to you that the title of said James H. was good, because he had inherited said lands from their father's estate, & that the same was free from any incumbrance, so far as he knew, except the judgment obtained by Gunn, guardian, against James H., Thomas J., and their brother John, and did not you (I. C.) then & there say, "Pshaw, I don't care the snap of my finger for that judgment; it isn't worth a straw or button," or some such words? State fully what Thomas J. did say when asked about the titles and encumbrances and the reply of either of you. If the conference with him about titles and encumbrances did not take place then, when did it take place, & what was said by either of you or James H. or Thomas J.? State fully when Thomas J. was called on, & why or when he saw you in relation to this matter. State all about it, giving dates, what was said by any of you, & how the conversation came to be held.

X 4th. State how much Woolfolk, Walker & Co. owed you on said transaction—how much of usuary was there in said debt—that is, state fully what was the principal debt at the time of loan or discount by you for said firm; attach to your answer full statement showing discount or interest charged, and how much, if any, was paid by said firm or by any other person for them on said debt.

5th. State what connexion your debt against Richard F. Woolfolk had with your debt against Woolfolk, Walker & Co. Was not
66 said Richard F.'s debt to you made by assuming part of said Woolfolk, Walker & Co.'s debt? How much have you collected on said debt of R. F. Woolfolk, and state whether in fact said payment by R. F. Woolfolk ought not to be credited on the mortgage of the said James H. If not all of it, state how much, and append to your answer full statement.

X 6th. State whether you know of any lands which belonged to the said James H. at the time he was adjudged a bankrupt, except the land the proceeds of which you now hold. Had he not sold at that time all of his lands except what you claim a mortgage upon?

R. W. JEMISON,
Sol. for Gunn, Guardian.

Copy of mortgage.

GEORGIA, *Bibb County:*

This indenture, made & entered into this the seventh day of December, eighteen hundred and sixty-eight, between James H. Woolfolk, of

said county, of the first part, and Increase C. Plant and Robert H. Plant, partners, using the firm-name of I. C. Plant & Son, of said county, of the second part, witnesseth that whereas the firm of Woolfolk, Walker & Company, of which firm the said party of the first part is a
67 member, and as such is bound for the payment of the debts hereinafter described, is indebted to the said I. C. Plant & Son as follows: On a draft drawn by P. H. Oliver on the said Woolfolk, Walker & Company, payable to their order and accepted and endorsed by them, for the sum of two thousand one hundred and sixty-eight $\frac{17}{100}$ dollars, dated July 25th, 1868, and due on the 1st of November next thereafter, on which there is a credit of nine hundred dollars, dated November 10th, 1868, leaving now due thereon twelve hundred and sixty-eight $\frac{17}{100}$ dollars, besides interest; on a draft drawn by R. F. Woolfolk on said Woolfolk, Walker & Co., & accepted by them, for eighteen hundred and forty-one $\frac{71}{100}$ dollars, dated November 21st, 1868, & payable fifteen days thereafter to the order of said Plant & Son, and being for an advance on 20 bales cotton, described in the warehouse-receipts attached to said draft; on a receipt or contract of the said Woolfolk, Walker & Co., dated November 10th, 1868, showing that said Plant & Son advanced them fifteen hundred & seventy-eight $\frac{15}{100}$ dollars on seventeen bales of cotton described therein & in the warehouse-receipts attached thereto, which they agreed to pay back on the 10th day of December, 1868, with interest, insurance, & all other expenses then due, to said Plant & Son; also, for advances made to said Woolfolk, Walker & Co., under an agreement in writing signed by them, dated October 16th, 1868, and contained in a book held by said Plant & Son, showing said advances as follows: five hundred and ninety dollars advanced October 16th, 1868; twenty-one hundred & fifty dollars advanced October 17th, 1868; six hundred dollars advanced October 23rd, 1868; two hundred and twenty-five dollars advanced October 29th, 1868; one thou-
68 sand dollars advanced October 31st, 1868, and two hundred and fifty dollars advanced November 6th, 1868, on each of which said advances the said Woolfolk, Walker & Co. is indebted to said Plant & Son for interest & insurance as well as the amounts advanced. Now, for and in consideration of five dollars paid by the said party of the second part to the said party of the first part, the receipt of which is hereby acknowledged, as well as to secure to the said parties of the second part the payment of the several amounts so due them as aforesaid, the said party of the first part hereby bargains, sells, and conveys to the said parties of the second part, their heirs and assigns, lots of land numbers one hundred and eighty-three, one hundred & fifty-seven, one hundred and eighty-two, and ninety acres of lot number one hundred and eighty-one, being the north part of said lot, all situate in the sixth district of originally Baldwin, now Jones, County, in said State, and containing six hundred and ninety-seven and a half acres, more or less. To have and to hold said parcels and lots of land to the said parties of the second part, their heirs & assigns, with all the rights, encumbers, and appurtenances to said land in anywise appertaining or belonging, upon condition, however, that if said party of the first part shall pay or cause to be paid to the said parties of the second part the said several sums of money so due and to become due to them as aforesaid, with the interest and insurance which may accrue thereon, up to the time of the payment thereof, then this indenture to be void, otherwise of full force. If any of said debts are renewed, this mortgage to
69 cover such renewed debt or debts.

In witness whereof the said James H. Woolfolk has hereunto set his hand and affixed his seal the day and year first aforesaid.

JAS. H. WOOLFOLK. [L. S.]

Signed, sealed, & delivered in presence of us, (the words, "If any of said debts are renewed this mortgage to cover such renewed debt or debts," added before signing.)

Witness:

THOS. J. WOOLFOLK.
W. W. WRIGLEY.
Notary Public.

CLERK'S OFFICE, SUPR. COURT.

GEORGIA, *Jones County:*

Filed in office Decbr. 9th, 8 o'clock p. m., 1868.

T. J. GIBSON,
Clerk S. C.

Recorded book S of deeds, pages 624 & 625, at 9 o'clock p. m., Decr. 9th, 1868.

THOS. J. GIBSON,
Clerk S. C.

Deposition of I. C. Plant.

GEORGIA, *Bibb County:*

By consent of parties, & by their counsel in the foregoing case, I have this day caused I. C. Plant & Robert H. Plant, the witnesses named in the interrogatories hereto attached, to appear before me, who,
70 being duly sworn true answer make to said interrogatories, depose and answer as follows, to wit:

I. C. PLANT, being duly sworn, deposes and says:

I have looked upon the annexed mortgage. It was given & executed to secure a claim I. C. Plant & Son held against Woolfolk, Walker and Company. It recites correctly the indebtedness it was given to secure; the consideration for said mortgage was for money advanced to Woolfolk, Walker and Company.

To the 2d inty. he answers: A number of bales of cotton was pledged to secure said indebtedness by Woolfolk, Walker & Company, by leaving with I. C. Plant & Son their receipts for said bales; said receipts specified that the cotton was to be delivered upon the return of those receipts only, & we, of course, believed the cotton was there. I cannot say what became of said cotton; the cotton was supposed to be held by Woolfolk, Walker & Company; it was to remain deposited at their warehouse in the city of Macon. I called on Woolfolk, Walker & Company at least a dozen times, asking them to deliver the cotton to me, or to arrange for the payment of the money advanced upon it. I did not collect the indebtedness or get the cotton. When I last called on them I found there was not enough cotton in their warehouse to answer the number called for in my receipt, & I then told them something was wrong.

71 To the 3d inty. he answers: I used all the diligence I could to get the cotton applied to said indebtedness.

To the 4th inty. he answers: When the mortgage was executed I had no knowledge or notice of any judgment in favor of defendant, Gunn,

or anybody else, against Woolfolk, Walker & Company. Mr. Saml. Hunter first told me of the existence of such a judgement several months after the mortgage was executed, & I was astonished at hearing of it.

To the 5th inty. he answers: The indebtedness of Woolfolk, Walker & Company to complainants arose by money being advanced to them by complainants. This was the consideration of the debt. When we saw the cotton could not be found we required additional security to be given, which security was the mortgage attached which he proposed to give.

To the 6th inty. he answers: James H. Woolfolk, Joel A. Walker, and John (A. or F.) Hafer; neither Walker nor Hafer have ever paid anything on account of this indebtedness, & so far as I know neither of them have any property or means with which to pay me or any other creditor.

To the 7th inty. he answers: I know of no other assets or property, except the individual property of James H. Woolfolk, out of which complainants can get any part of the indebtedness for which said mortgage was given to secure.

To the 8th inty. he answers: Mr. James H. Woolfolk was the capitalist of the firm, and all credit to the firm was given upon the
72 faith of his responsibility; no other member of the firm had any capital.

To the first cross-interrogatory he answers: I understood that the land described in said mortgage was the individual property of James H. Woolfolk. It was given to secure a firm-debt of Woolfolk, Walker & Company, and not an individual debt of James H. Woolfolk. Said debt had been contracted about two or three months before the mortgage was given; said mortgage was executed after said debt matured, & after we had failed to collect it of said firm.

To the 2d x-inty. he answers: I told James H. Woolfolk that if the paper was not settled & the amount paid I would commence a criminal prosecution against them for misapplying cotton left with them in trust to secure this paper as specified in their receipts. The result was he, James H. Woolfolk, gave us this mortgage to secure the debt. I did not say to him that if he did not give this mortgage I would send him to the penitentiary, but I told him that if he did not secure the debt by mortgage or otherwise I would send him to the penitentiary. He may possibly have executed the mortgage from fear of the consequences of said threats and his actions. I. C. Plant did swear the substance of the above facts on the witness-stand in Bibb superior court some time in April, 1871, on the trial of the case I. C. Plant & Son vs. R. F. Woodfolk, & did say that if James A. Woolfolk had not secured the debt by mortgage or otherwise that he would send him to the penitentiary.

73 To the 3rd x-inty. he answers: Said mortgage was signed in the office of I. C. Plant & Son, on Cherry street. I asked Thomas J. Woolfolk, at the time the paper was executed, whether the title was good, & he said it was good & free from encumbrance, as it came from his father's estate. He did not then except any judgment or incumbrance. Some time after it was executed, & I had seen Mr. Hunter, who informed me of the judgment, I inquired of Thomas J. Woolfolk about it, & told him that Mr. Hunter has said that there was a judgment held by Gunn & others, & asked him of it. He said then that there was a judgment. I might have said, when I heard of the existence of the judgment & its date, that I did not fear it, or words to that effect, as I knew nothing of it when the mortgage was executed to us. Thomas J.

Woolfolk, when asked about the incumbrance, simply said that he understood that there was a judgment against James H. Woolfolk in favor of Gunn, guardian. My reply was that I knew nothing about it, & therefore my deed was good. The conference about the title & encumbrance took place some time after the deed was made, but cannot state exactly the date. I have stated the conversation as near as I remember, but cannot state the dates. The conversation came about by my stating that I had heard of the incumbrance; but this was some time after the mortgage had been executed.

To the 4th x-inty. he answers: Woolfolk, Walker & Co. owed I. C. Plant & Son, on said transaction, at the time they failed, twenty-six hundred & fifty-eight $\frac{61}{100}$ dollars; in the amount there was fifty-
74 eight $\frac{1}{100}$ dollars usury. The principal debt at the time of the loans cannot be accurately stated, as it was made up of loans & advances on cotton at different times, as will be shown by the extract from the book of I. C. Plant & Son of the account of Woolfolk, Walker & Company, hereto attached as Exhibit A and made part of my answer. That account shows their true indebtedness & the usury on it. I have attached a statement. Woolfolk, Walker & Company also owed I. C. Plant & Son as acceptors of a draft of R. F. Woolfolk for eighteen hundred & forty-one $\frac{71}{100}$ dollars, upon which there was paid five hundred dollars, and on which has since been paid fifteen hundred & thirteen dollars; but this debt is in judgment and the fi. fa. in the hands of the sheriff, & there is due upon it interest and cost; I cannot make a statement showing exact amount due on it. This debt was also secured by the mortgage testified about.

To the 5th x-inty. he answers: The only connection that R. F. Woolfolk's debt had with Woolfolk, Walker & Co.'s debt was that Woolfolk, Walker & Company were the acceptors, & the mortgage was given to secure it as well as their own debt. Richard F. Woolfolk's was not made by assuming part of Woolfolk, Walker & Co.'s debt, but was a separate claim. I have above stated how much money was collected on Woolfolk, Walker & Company's debt. It ought not to have been credited on the Woolfolk, Walker & Co.'s debt, but on his own; nor on their mortgage. None of it ought to be so credited.

To the 6th X inty. he answers: I do not know of any lands which be-
longed to said James H. Woolfolk at the time he was adjudged a
75 bankrupt. I know nothing about what lands he held or what he sold.

I. C. PLANT.

Answered, sworn to, & subscribed before me this 24th day of November, 1873.

E. F. BEST, *Com'r.*

Deposition of R. H. Plant.

R. H. PLANT, being sworn, deposes & says:

To the 1st inty. he answers: I have looked on the annexed mortgage. It was given to secure a debt due to I. C. Plant & Son by Woolfolk, Walker & Company. It recites correctly the consideration.

To the 2d inty. he answers: We had sundry cotton-receipts left with us by Woolfolk, Walker & Company to secure the debt. The cotton was supposed to be held by Woolfolk, Walker & Company in their warehouse in Macon. I applied to Woolfolk a half a dozen times to have the cotton applied to the payment of the debt, & failed to succeed,

because the cotton could not be found. The receipts specified that the cotton should only be delivered upon the return of them.

To the 3rd inty. he answers: I used every diligence to get the cotton applied to the payment of the debt. I never knew anything about any judgment then existing against Woolfolk, Walker & Co. of any kind whatever.

76 To the 5th inty. he answers: The indebtedness of Woolfolk, Walker & Co. to complainants arose from money advanced to them on cotton-receipts. The consideration was money loaned as above stated. The additional security was given because the cotton could not be found which had been pledged for the payment of the debt.

To the 6th inty. he answers: The firm of Woolfolk, Walker & Co. is composed of James A. Woolfolk, Joel A. Walker, & John (A. or F.) Hafer. Neither Walker nor Hafer ever paid anything on the debt due I. C. Plant & Son, nor have any of them any property, as far as I know.

To the 7th inty. he answers: I know of no other property or assets except the individual property of James A. Woolfolk out of which this debt can be made.

To the 8th inty. he answers: James H. Woolfolk was the responsible member of the firm; the others were not men of capital.

Cross inty's:

To the 1st X inty. he answers: The lands described in the mortgage, I suppose, was the individual property of James H. Woolfolk. It was given us to secure the debt of the firm of Woolfolk, Walker & Company when the cotton pledged could not be found. It was not the individual debt of James H. Woolfolk. The debt had been made two or three months before the mortgage was given. Said mortgage was executed after the maturity of said debt, & after we had failed to

77 collect the same.

To the 2nd cross-inty. he answers: I know nothing about the threats interrogated about—of anything interrogated about in the 2d X interrogatory.

To the 3 X inty. he answers: I do not think I was present at the signing of the mortgage, & do not remember where it was signed. I know nothing of the interview with Thomas J. Woolfolk interrogated about. That portion of the transaction was arranged by I. C. Plant, & I know nothing of it.

To the 4th X inty. he answers: Woolfolk, Walker & Company owed I. C. Plant & Son, at the time they failed, on the transaction for which the cotton was pledged, twenty-six hundred & fifty-eight $\frac{61}{100}$ dollars, on which there was fifty-eight $\frac{1}{100}$ dollars usury. The also owed, as acceptors for R. F. Woolfolk, eighteen hundred & forty-one $\frac{71}{100}$ dollars, on which five hundred dollars was paid, & since has been put in judgment, & fifteen hundred & thirteen dollars has been paid. The sheriff now holds the fi. fa., upon which there is also due costs & interest. I refer to the statement attached as Exhibit A, which is a correct statement of the account of Woolfolk, Walker & Company with I. C. Plant & Son, (taken from their books,) of the account for which the cotton-receipts were given to secure on more property the account of money advanced to them. I cannot make an accurate statement of their indebtedness as acceptors for R. F. Woolfolk, as it is in judgment & has been nearly paid up.

To the 5th X inty. he answers: The only connection the del t

78 of R. F. Woolfolk had with Woolfolk, Walker & Company was that they were acceptors on his draft, & the mortgage was

given to secure both. R. F. Woolfolk's debt was entirely separate & independent of the debt of Woolfolk, Walker & Company, and was not made by assuming part of the debt of Woolfolk, Walker & Company. We have collected nearly all of the debt of R. F. Woolfolk, as shown in previous answer, but none of it ought to be credited to Woolfolk, Walker & Co.'s debt; that is the debt of money advanced, & none of it is so credited, but is credited on R. F. Woolfolk's debt.

To the 6th X inty. he answers: I know nothing whatever of the property of James H. Woolfolk, of any character whatever.

R. H. PLANT.

Answered, sworn to, & subscribed before me this 24th day of Novr., 1873.

E. F. BEST, *Com'r.*

79 EXHIBIT A.

Woolfolk, Walker & Co. in ac. with I. C. Plant & Son.

1868.				
Oct. 16.	To cash advanced on cotton		750	
17.	" " " " "		2,650	
23.	" " " " "		600	
29.	" " " " "		225	
31.	" " " " "		1,550	
Nov. 6.	" " " " "		250	
	" interest charged on above advances		92	63
			6,117	63
1868.				
Nov. 5.	By advances paid by cash		1,060	
14.	" " " " "		150	
1869.				
Jany. 12.	" " " " "		1,125	
Feby. 13.	" " " " "		400	
Oct. 18.	" " " " "		631	39
	" excess of interest charged over 7%		58	01
Balance due I. C. Plant & Son, Oct. 18, 1869			2,693	23
			6,117	63
Balance due I. C. Plant & Son, Oct. 18, 1869			2,693	23
Less difference in interest			34	62
Principal debt due I. C. P. & Son, Oct. 18, '69			2,658	61

80 *Interrogatories.*

Interrogatories for James H. Blount and Albert B. Ross, material witnesses for the complainants, & who reside at Macon, Georgia, more than 100 miles from the city of Savannah.

Inty. 1st. Do you know James H. Woolfolk, and do you know anything about the property he owned when he was declared a bankrupt in the spring or early part of the summer of 1869?

Inty. 2nd. If you have any such knowledge, please give such description of the property, its quantity, quality, & location as you are able to do & with as much definiteness as possible.

Inty. 3rd. If you have mentioned any land of the said Woolfolk, please give your opinion of its value in said year 1869, & particularly the value of each tract or parcel, if more than one parcel or tract, & whether or you have been well acquainted with the lands about which you testify, & state any other matter or thing material to be known in the matter.

LANIER & ANDERSON,
Complts.' Sols.

81 *Cross-interrogatories.*

X 1. Do you, or either of you, of your own personal knowledge, know what lands the said James H. Woolfolk owned in the spring of 1869? State from what source or from whom you obtained your information, stating specifically as to each tract named by you and by each of you.

X 2. Do you, or either of you, of your own personal knowledge, know the character & value of each & every parcel of land owned by said James H. in the spring of 1869? State from what source or from whom you obtained your information as to said value, stating specifically as to each tract valued by you & by each of you.

R. W. JEMISON,
Sol. for Gunn, Gr.

Acknowledgment of service.

Due & legal service of the within acknowledged & commission waived Nov. 20, 1873.

R. W. JEMISON,
Sol. for Gunn, Gr.

82 *Deposition of James H. Blount.*

GEORGIA, *Bibb County:*

By consent of counsel in the foregoing case, I have this day caused James H. Blount & A. B. Ross, the witnesses named in the interrogatories hereto attached, to appear before me, who, after being duly sworn true answer to make to said interrogatories, depose & answer as follows, to wit, James H. Blount being first sworn.

To the first inty. James H. Blount answers: I know James H. Woolfolk. I know about the time he was declared a bankrupt, in the spring of 1869, that he owned a plantation in Jones County.

To the 2d inty. he answers: The plantation lies on the Macon & Augusta Railroad, about thirteen miles from Macon. I have never seen the titles to the property, but have understood from Mr. James H. Woolfolk, Mr. Thomas Woolfolk, & the neighbors that there was about twenty-four hundred acres. The lands were remarkably well timbered, and regarded by myself & the public generally as the best in the county.

To the 3rd inty. he answers: The lands in 1869, I think, were worth ten dollars per acre. I cannot designate the value of each particular tract, as I do not know the lines. I am not very familiar with the lands, but would then have given the price aforesaid.

83 Cross-interrogatories:

To the 1st x inty. he answers: I know that James H. Woolfolk had for many years owned the lands to which I refer, & they were generally reputed by the neighbors to belong to him in the spring of

1869. I cannot state anything specifically as to each tract, not knowing the lines.

To the 2d cross inty. he answers: I do not know the value of each particular tract; it is not usual to value large bodies of land by the valuation of each tract. My information as to the value of those lands is obtained from James H. Woolfolk, Thomas J. Woolfolk, Peyton T. Pitts, & James M. Gray, whose lands adjourn them, & from personal observation.

JAMES H. BLOUNT.

Answered, sworn to, & subscribed before me this 25th of Nov'r, 1873.

Deposition of Albert B. Ross.

ALBERT B. ROSS, being duly sworn, deposes & says:

To the 1st int'y he answers: I know James H. Woolfolk. I know about the property he owned in 1869. I supposed he owned the property that he was said to have an interest in where he lived, & in the lots in East Macon of the Du Bois survey known as the Woolfolk lots.

84 To the 2d inty. he answers: I am not able to give any particular description of the property further than I have given. I know nothing of the quantity; its quality is variable, some good & some poor. The lots are located in near East Macon. The homestead is within about a mile of the court-house in Macon.

To the 3d inty. he answers: I have known the land ever since 1838 or '9. The East Macon lots & homestead, I would suppose, would average about twenty-five dollars per acre at least. I cannot testify as to the particular value of each tract.

Cross-inty.:

To the 1st x inty. he answers: I do not know, of my own personal knowledge, all the lands James H. Woolfolk owned in 1869. I only know, of my own knowledge, obtained from the life-time residence in the vicinity of the land & acquaintance of parties & general hearsay & records of court, as the tracts I have spoken of.

To the 2d x inty. he answers: I do not, of my own knowledge, know of the character & nature of the land owned by James H. Woolfolk in the spring of 1869, except as before stated. I think it is well worth what I have testified. I obtained my information as to the value of the lands from no one, but estimate it from my own knowledge of the land.

A. B. ROSS.

Answered, sworn to, & subscribed before me this 26th day of November, 1873.

85 E. F. BEST,
Comr.

Interrogatories.

Interrogatories for James H. Woolfolk & Thomas J. Woolfolk, material witnesses for defendants in the above-stated cause, & who reside more than one hundred miles from the city of Savannah.

Inty. 1st. (To James H. Woolfolk.) State whether or not you were one of the firm of Woolfolk, Walker & Co., who, in 1869, were forced into bankruptcy by their creditors.

Inty. 2. State whether you individually or said firm were at that time in debt to said I. C. Plant & son; and, if you ever gave a mortgage to

said I. C. Plant & Son to secure any debt, was said security given for your own individual debt or the debt of said firm ?

Inty. 3. State whether you gave said mortgage of your own free will & accord or because of threats made by said I. C. Plant that if you did not give said mortgage that he would commence some criminal prosecution against you growing out of certain cotton transactions with your said firm of Woolfolk, Walker & Co. about that time. State fully all the facts and circumstances touching the giving of said mortgage & why you gave the same.

86 Inty. 4th. State whether or not at the time of the giving of said mortgage or before giving it you said anything to said I. C. Plant & Son or to either of them about the existence of a judgment of Gunn, guardian, against yourself, your brother Thomas J. & John W. Woolfolk; and, if anything was said, state, as near as you can, words used by you, your brother Thomas J., or by said I. C. Plant & Son, or either of them, of said judgment of Gunn's.

Inty. 5th. State whether you were present at April term, 1870, Bibb superior court, during the trial of the case of I. C. Plant & Son, & while said I. C. Plant was on the witness-stand. If you were present, state what said I. C. said about threats which he used to you about a criminal prosecution if you had refused or failed to execute said mortgage, & whether or not said threats were used, as stated by said I. C. at that time.

Inty. 6th. (To Thomas J. Woolfolk.) If you know anything about your brother, the said James H. Woolfolk, giving a mortgage to I. C. Plant & Son about the time Woolfolk, Walker & Co. failed or were forced into bankruptcy, state whether or not said mortgage was given for the individual debt of said James H. or the partnership debt of said Woolfolk, Walker & Co.

Inty. 7th. If you know of any threats made by said I. C. Plant & Son or either of them to institute criminal proceedings against your

87 brother James H., unless he, your said brother, should execute said mortgage, state fully what was said by said I. C. Plant & Son or either of them. State, as near as you can recollect, the exact words used and give details of all the facts & circumstances connected therewith.

Inty. 8th. If you were present at the time of execution of said mortgage or was in conference with them, state how you came to be present, what was asked you about the titles of your brother & said land, and about encumbrances on said land; and, if you stated anything to said I. C. Plant & Son or either of them about the judgment of Gunn, guardian, against yourself, your brothers, James H. & John W., state fully what you did say and what reply said I. C. Plant or his son made, using, as near as you can, words used by each of you. State where said mortgage was signed, when, and any other fact connected with same which will benefit defts.

R. W. JEMISON,
Sol. for Gunn, Guardian.

Acknowledgment of service.

Due & legal service of the within interrogatories acknowledged & copy waived. Let the testimony be taken without a commissioner, Nov. 25th, 1873.

We name as commissioner either Robert Hardeman or Rowland T. Ross, of Clinton, Geo.

LANIER & ANDERSON,
Complt's Sols.

88 *Joint deposition of James H. Woolfolk and Thomas J. Woolfolk.*

GEORGIA, *Jones County:*

By virtue of an agreement between the parties or counsel in the case of I. C. Plant & Son vs. Robert A. Nesbit, trustee, &c., & Gunn, guardian, & others, pending in the fifth circuit court of the United States for the southern district of Georgia, the undersigned, acting as commissioners, have caused James H. Woolfolk & Thomas J. Woolfolk, witnesses in said case, to come before us, who, being duly sworn true answers to make to the annexed interrogatories, deposes & answers as follows:

To the first interrogatory James H. Woolfolk answers: I was one of the firm of Woolfolk, Walker & Co. in 1869.

To the 2d int. he answers: The firm Woolfolk, Walker & Co. owed I. C. Plant & Son, but I owed nothing individually. I gave a mortgage to I. C. Plant & Son to secure the debts of the firm of Woolfolk, Walker & Co., & not for my individual debts.

To the 3d int. he answers: I did not give said mortgage of my own free will & accord, but on account of the threats of I. C. Plant that unless I did give said mortgage he would commence a criminal
89 prosecution against me on account of certain cotton transactions of the firm of Woolfolk, Walker & Co. about that time. I gave this mortgage because I. C. Plant had me arrested & carried before a magistrate & threatened a criminal prosecution for having obtained money on cotton-receipts after the said cotton had been sold without my knowledge, as I was at the time serving upon the grand jury of Bibb County, & the parties owning the cotton had been paid the money without my knowledge.

To the 4th inty. he answers: I said to Mr. I. C. Plant at the time of giving said mortgage that I was security on a judgment in favor of Gunn against myself & John W. Woolfolk, as securities, & Thos. J. Woolfolk as principal. I. C. Plant said, "I would not give the snap of my finger for any old debt made before the war."

To the 5th int. he answers: I was present at the April term of Bibb superior court, in 1870, & I. C. Plant said on the witness-stand that if I "had not given him said mortgage, he would have prosecuted me on the criminal side of the court." He, the said I. C. Plant, repeated that if I had not given him this mortgage, he would have prosecuted me for obtaining money on cotton-receipts under false pretences.

To the 6th int. Thos. J. Woolfolk answers: My brother, James H. Woolfolk, gave a mortgage to I. C. Plant & Son about seven
90 months before Woolfolk, Walker & Co. were forced into bankruptcy. Said mortgage was given to secure the debts of the firm of Woolfolk, Walker & Co., & not for his individual debts.

To the 7th int. Thomas J. Woolfolk answers: I know of no threats within my own knowledge made by either I. C. Plant or his son to institute criminal proceedings against James H. Woolfolk should he fail to execute said mortgage, but heard that threats of that kind had been made by I. C. Plant.

To the 8th int. Thomas J. Woolfolk answers: I was present at the time of the execution of said mortgage, by request of Mr. I. C. Plant, when he said to me, "I know you have always been a gentleman & a man whose word can be relied upon. I have sent for you to know if the property which your brother is about to mortgage belongs to him." I replied "that the property he was about to mortgage had been assigned to him by me as executor of Thomas Woolfolk, dec'd, and belonged

to James H. Woolfolk." I told Mr. I. C. Plant that James H. Woolfolk's title to said property I knew to be good. I. C. Plant asked me if there were any incumbrances or drawbacks on said property, & I told him the only drawback was the judgment of D. F. Gunn, guardian, for an old debt prior to the war against Thos. J. Woolfolk, principal, & James H. & John W. Woolfolk, as securities, & I. C. Plant replied that all those old debts would be wiped out by legislative enactments, & he cared nothing for them, & that he would not give the snap of his finger for any of them. Said mortgage was executed in the city of
91 Macon, county of Bibb & State of Georgia, in the back room of the First National Bank, on the seventh day of December, 1868, & immediately after being executed I. C. Plant & myself walked to the door fronting on Cherry st., and I remarked he was a little hard on James H. Woolfolk, & he said that if James H. Woolfolk played his cards well he could get out of this copartnership business, & that he had no confidence in Walker & Hafer, his partners. Then I again called Mr. I. C. Plant's attention to this execution of Gunn, guardian, against James H. Woolfolk, & he replied "I am willing to take the risk," referring to these old debts.

JAMES H. WOOLFOLK, *Witness.*
THOMAS J. WOOLFOLK, *Witness.*

Answered, subscribed, & sworn to before us this 17th day of Dec., 1873.

R. H. KINGMAN, *Com'r.* [L. S.]
ROB'T. V. HARDEMAN, *Com'r.* [L. S.]

Final decree.

I. C. PLANT & SON, COMPLTS., vs. DANIEL F. GUNN, GUARDIAN, &C., AND JOSEPH E. MURRAY, trustee. } In equity. Argued May 2d, 1874. Opinion delivered May 5th, 1874.

92 Said cause coming on to be heard on pleadings and testimony, after argument had, it is ordered, adjudged, and decreed that said complainants do recover in the sum of two thousand six hundred and fifty-eight dollars and sixty-one cents ($2,658.61) as principal, with interest at the rate of seven per cent. per annum on said principal sum from the eighteenth (18th) day of October, eighteen hundred and sixty-nine, (1869,) and in the sum of dollars and cents, as costs of this suit; said principal, interest, and costs to be paid out of the fund mentioned in said bill as being deposited with said complainants, subject to the order of this court, and that a certified copy of this decree be authority and voucher to said complainants for disbursement hereunder. It is further ordered that the balance of said fund, after said complainants are paid as above, be paid to said Daniel F. Gunn, guardian, to be credited on his said debt, as set up in his said answer.

In open court, May 6th, 1874.

W. B. WOODS,
Judge.

LANIER & ANDERSON,
W. U. GARRARD,
Sol. for Complts.

(Endorsed:) In the fifth U. S. circuit court for sou. dist. Geo. I. C. Plant & Son, complts., vs. Daniel F. Gunn, guardian, and Joseph E.

Murray, trustee. In equity. Final decree. Filed May 6th, 1874. Jas. McPherson, clerk. Lanier & Anderson and W. U. Garrard.

93 *Petition for appeal.*

The defendant, Daniel F. Gunn, guardian, comes and prays an appeal from the decree of this court to the Supreme Court of the United States and to fix the amount of the appeal-bond.

R. W. JEMISON,
JACKSON LAWTON & BARINGER,
CHAS. N. WEST,
Solicitors for D. F. Gunn.

Order granting appeal.

The defendant, Daniel F. Gunn, guardian, comes and prays an appeal from the decree of this court to the Supreme Court of the United States, and the matters in controversy being of more than two thousand dollars in value the court, on motion of the said defendant, grant an appeal in said cause, as prayed, and fix the amount of the appeal-bond at five hundred dollars.

May 6th, 1874.

W. B. WOODS,
Judge.

94 (Endorsed:) U. S. cir. court so. dist. of Georgia. In equity. I. C. Plant & Son vs. D. F. Gunn, guardian, &c., et al. Petition for appeal and order granting appeal. Filed May 6, 1874. Jas. McPherson, clerk. C. N. West, sol. for D. F. Gunn, guardian.

Motion to modify decree.

And now come Robert A. Nisbet as trustee for the estate of James H. Woolfolk, Woolfolk, Walker & Co., and Benjamin G. Lockett, a judgment-creditor of said James H. Woolfolk, and other parties as contract-creditors of James H. Woolfolk & Woolfolk, Walker & Co., whose claims have been duly proved in bankruptcy, & move to set aside so much of said decree as directs the payment of certain funds in the hands of I. C. Plant & Son to said Gunn, guardian, upon the following grounds, to wit: 1st. Because said decree was rendered without making Robert A. Nisbet, who was the trustee at the time of the rendition of the same, a party to said bill. 2nd. Because by said decree the rights of parties are adjudicated who were not parties to said proceeding. 3rd. Because the lien of the judgment of said Benjamin G. Lockett, as transferred to him by William S. Holt & John E. Jones, as administrators of the estate of James Dean, is older than & superior to the lien of the judgment of said Daniel F. Gunn, guardian. 4th.
95 Because said decree was rendered by the court upon a misapprehension of the position of other parties, creditors of said James H. Woolfolk, who were not before the court in said cause.

WHITTLE & GUSTIN,
Counsel for R. A. Nisbet, trustee, B. G. Lockett & other creditors.

(Endorsed:) In 5th circuit court United States for southern district of Georgia. I. C. Plant & Son vs. D. F. Gunn, gdn., & J. E. Murray, trustee. In equity. Motion to modify decree. Filed May 13, 1874. Jas. McPherson, clerk. Whit'le & Gustin.

Amendment to decree.

It is ordered & decreed by the court that the decree heretofore rendered in said cause be so modified & amended as to direct the payment of the fund in the hands of I. C. Plant & Son, remaining after the payment of the amount due to them, to the trustee in bankruptcy of said bankrupts, to be distributed according to the legal priorities of the creditors of said bankrupts, instead of said Daniel F. Gunn, guardian, as provided by said decree.

May 13th, 1874.

W. B. WOODS,
Judge.

96 (Endorsed:) In 5th circuit court U. S. for southern dist. of Georgia. I. C. Plant & Son vs. Daniel F. Gunn, gdn., & J. E. Murray, trustee. In equity. Amendment to decree. Filed May 13, 1874. Jas. McPherson, clerk. Whittle & Gustin.

Appeal-bond.

Supreme Court of the United States.

I. C. PLANT & SON, COMPLAINANTS,
and
DANIEL F. GUNN, GUARDIAN, AND JOSEPH E. Murray, trustee, defendants.

Know all men by these presents, that we, Daniel F. Gunn, guardian of Ulysses M. Gunn, Julia M. Gunn, and Valeria Bass, of the county of Houston, in the State of Georgia, and James W. Lathrop and Josiah L. Warren, of the county of Chatham, and State of Georgia, are held and firmly bound unto Increase C. Plant and Robert H. Plant, copartners, doing business under the firm-name of I. C. Plant & Son, of the
97 county of Bibb, in the said State of Georgia, in the sum of five hundred dollars, to be paid to the said I. C. Plant & Son, or the survivor of them, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, dated this 23rd day of of May, 1874.

Whereas the above-named Daniel F. Gunn, guardian as aforesaid, hath taken an appeal to the Supreme Court of the United States, to reverse the decree rendered in the above-entitled action by the circuit court of the United States for the southern district of Georgia, now, therefore, the condition of this obligation is such, that if the above-named Daniel F. Gunn shall prosecute his said appeal to effect, and answer all costs and damages if he shall fail to make good his plea, then this obligation to be void; otherwise to remain in full force and virtue.

And the said Daniel F. Gunn executes this obligation by his attorney in fact, Ulysses M. Gunn, whose letter of attorney is attached hereto.

D. F. GUNN, [SEAL.]
By U. M. GUNN, *Atty. in fact.*
JAMES W. LATHROP. [SEAL.]
JOSIAH L. WARREN. [SEAL.]

Sealed and delivered in presence of—
JAS. MCPHERSON,
Clerk.

98 *Justification of surety.*

SOUTHERN DISTRICT OF GEORGIA:

James W. Lathrop and Josiah L. Warren, sureties to the above bond, deposes and says, under his solemn oath, each for himself, that he is a freeholder, residing in the southern district of Georgia, and that he is worth the sum of five hundred dollars, over and above all his just debts and liabilities and the amount exempted from levy and sale by the laws of the State of Georgia.

JAMES W. LATHROP.
JOSIAH L. WARREN.

Sworn to and subscribed before me this May 23, 1874.

JAS. McPHERSON,
Clerk.

Approval of bond.

Bond approved.

JOHN ERSKINE,
U. S. Judge.

MAY 29, 1874.

99 *Power of attorney.*

STATE OF GEORGIA,
Bibb County:

Know all men by these presents that I, Daniel F. Gunn, have constituted, made, and appointed, and by these presents do make, constitute, and appoint U. M. Gunn my true and lawful attorney, for me, and in my name, place, and stead, to execute in my name & stead an appeal-bond to the Supreme Court of the United States, in the matter of I. C. Plant & Son vs. D. F. Gunn, guardian, et al., pending in the fifth circuit court for the southern district of Georgia, wherein a decree was rendered against the defendants; & to procure the proper securities to said appeal-bond, giving and granting unto him, said attorney, full and whole power and authority in and about the premises, and generally to do and perform all and every act and acts, thing and things, device and devices, in the law whatsoever needful and necessary to be done in about the premises; and for me and in my name to do, execute, and perform, as largely and amply, to all intents and purposes, as I might or could do if I were personally present for the purpose aforesaid, hereby ratifying and confirming all that he, said attorney, shall lawfully do by virtue hereof.

It witness whereof I have hereunto set my hand and seal the 22d day of May, in the year of our Lord one thousand eight hundred and seventy-four.

100 D. F. GUNN. [L. S.]

Sealed and delivered in presence of—

B. HILL,
Judge Supr. Court, Macon Circuit.

N. E. HARRIS,
Not. Public, Bibb County, Ga.

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

On this 22nd day of May, A. D. 1874, the within-named Daniel F. Gunn appeared before me and acknowledged this power of attorney to be his act and deed.

As witness my hand and official signature.

ALEXANDER G. MURRAY,
Register in Bankruptcy.

Filed May 23, 1874.

JAS. McPHERSON,
Clerk.

(Endorsed:) U. S. circuit court, southern district of Georgia. I. C. Plant & Son, complainants, and D. F. Gunn, guardian, et al., defendants. Appeal-bond. Filed this 1st day of June, 1874. Jas. McPherson, clerk.

101 *Certificate of clerk.*

UNITED STATES OF AMERICA,
Southern District of Georgia, ss:

I, James McPherson, clerk of the circuit court of the United States of America for the fifth circuit and southern district of Georgia, do hereby certify that the writings annexed to this certificate are true copies of their respective originals now on file and remaining of record in my office, being a complete and perfect exemplification of the record and proceedings in the suit of I. C. Plant & Son vs. Daniel F. Gunn, guardian, and Joseph E. Murray, trustee.

In testimony whereof I have hereunto set my hand and duly affixed the seal of the said court at the city of Savannah, in said southern district of Georgia, this 30th day of May, A. D. 1874, and of the Independence of the United States the ninety-eighth.

[SEAL.] JAS. McPHERSON, *Clerk.*

In the circuit court of the United States, southern district of Georgia.

I. C. PLANT & SON, COMPLAINANTS,
and
D. F. GUNN, GUARDIAN, &C., ET AL., DEFENDANTS. } In equity.

The defendant, Daniel F. Gunn, comes and prays an appeal from the decree of this court to the Supreme Court of the United States, and to fix the amount of the appeal-bond.

R. W. JEMISON.
JACKSON, LAWTON & BASINGER,
CHAS. N. WEST,
Solicitors for D. F. Gunn.

The defendant Daniel F. Gunn, guardian, comes and prays an appeal from the decree of this court to the Supreme Court of the United States; and the matters in controversy being of more than two thousand dollars in value, the court, on motion of the said defendant, grant an appeal in said cause as prayed, and fix the amount of the appeal-bond at five hundred dollars.

W. B. WOODS, *Judge.*

MAY 6TH, 1874.

(Indorsed:) U. S. cir. court., so. dist. of Georgia. In equity. I. C. Plant & Son vs. D. F. Gunn, guardian, &c., et al. Petition for appeal, and order granting appeal. Filed May 6, 1874. Jas. McPherson, clerk. C. N. West, sol. for D. F. Gunn, guardian.

(Indorsement on cover:) No. 246. Daniel F. Gunn, guardian of W. M. Gunn et al., appellant, vs. Increase C. Plant, Robert H. Plant, and Morris Ketchum, partners under the firm name & style of I. C. Plant & Son. S. Georgia C. C. U. S. Filed 28th November, 1874.

IN THE

Supreme Court of the United States.

Daniel F. Gunn, Guardian of U. M. Gunn et al., Appellant,

vs.

I. C. Plant & Son.

Appeal from the Circuit Court of the United States for the Southern District of Georgia.

Brief of T. M. Norwood, Counsel for Appellant.

Joseph L. Pearson, Printer, 9th and D streets, Washington.

IN THE

Supreme Court of the United States.

DANIEL F. GUNN, Guardian of U. M. Gunn et al., Appellant, *vs.* I. C. PLANT & SON.	Appeal from the Circuit Court of the United States for the Southern District of Georgia.

Brief of T. M. Norwood, Counsel for Appellant.

I.

STATEMENT.

At the May term of the Superior Court held for the County of Bibb, State of Georgia, A. D. 1866, the appellant brought suit against Thomas J. and James H. Woolfolk, principals, and John W. Woolfolk, surety, on a promissory note. At the November term thereafter, the jury gave a verdict for plaintiff for $11,212.38, with interest from 14th April, 1860.

Judgment was thereupon entered up for the principal only of said debt. A *fi. fa.* was issued, on the same day, for said principal and for interest, and between that date and February 15th, 1869, several payments were made on account by the defendants in execution.

On December 7th, 1868, said James H. Woolfolk, as a partner of the firm of Woolfolk, Walker & Co., executed a mortgage on a lot of land to secure a debt due *from said firm* to I. C. Plant & Son, the appellees. This debt arose

from credit given to this firm eighteen months after Gunn's judgment was entered up. Before the mortgage was given, it is in evidence that I. C. Plant (one of appellees) was told by the mortgagor (J. H. Woolfolk) and T. J. Woolfolk, the other principal debtor in the judgment, of the existence of said judgment in favor of D. F. Gunn, guardian.

In 1869 the said James H. Woolfolk was adjudged a bankrupt. J. E. Murray, trustee in bankruptcy, soon after, sold the land which Woolfolk had mortgaged to I. C. Plant & Son, for the sum of $5,834.50. In October, 1869, Plant & Son foreclosed their mortgage after said adjudication in bankruptcy.

At the November term of Bibb Superior Court, the defendants (Woolfolks) gave notice to plaintiff that they would move to set aside said verdict, because it did not appear in the minutes. A counter motion was made by plaintiff to have the verdict spread on the minutes and also to enter up judgment *nunc pro tunc* for the interest. The motion to vacate was refused and the motions to enter the verdict and amend the judgment were granted at the April term, 1871.

Meanwhile Gunn and Plant & Son were claiming the proceeds of the land mortgaged to Plant & Son and sold by Murray, trustee, and to determine their respective rights to this fund, Plant & Son, in 1872, filed a bill in the United States circuit court, praying to have Gunn enjoined and the money decreed to them.

The two grounds on which the complainants rest their case are:

1st. That Gunn's verdict and judgment are invalid, and, therefore, give no lien on the mortgaged land, because the verdict was not entered on the minutes of Bibb Superior Court in November, 1866, or before the land was mortgaged to complainants; and—

2d. That if Gunn's judgment was a lien at that time, still, in equity they should pursus other property of defendants in *fi. fa.*, on which said judgment is a general lien,

and leave this fund to them, Plant & Son, as their lien only covered the land mortgaged.

Meanwhile, defendants in judgment (Woolfolks) carried the decisions of the superior court, which permitted the verdict to be entered on the minutes and the judgment to be amended as to the interest, to the Supreme Court of Georgia for review and correction, and the supreme court affirmed both judgments.

On the hearing of said bill, answers, and testimony, His Honor, Judge Woods, decided, May 5th, 1874, (Record, p. 40,) that the said I. C. Plant & Son should recover the full amount of their claim, to wit, $2,658.61 principal, with interest thereon at 7 per cent. from the 18th of October, 1869, and costs of suit; said principal, interest, and costs to be paid out of the fund raised from the sale of the said mortgaged land, and that the balance of said fund be paid said Daniel F. Gunn, guardian, to be credited on his said judgment. On May 13th, 1874, a motion was made by Robert A. Nisbet, as trustee for the estate of James H. Woolfolk, Woolfolk, Walker & Co., and by Benjamin G. Lockett, a judgment creditor of James H. Woolfolk, and by other parties as contract creditors of James H. Woolfolk and Woolfolk, Walker & Co., whose claims had been proved in bankruptcy, to set aside so much of said decree as directed the payment of the remainder of said fund to said Gunn, guardian, upon the following grounds, to wit:

1st. Because said decree was rendered without making Robert A. Nisbet, who was trustee at the time of the rendition of the same, a party to said bill.

2d. Because by said decree the rights of parties were adjudicated who were not parties to said proceeding.

3d. Because the lien of the judgment of said Lockett was older and superior to the judgment of said Gunn.

4th. Because said decree was rendered by the court upon a misapprehension of the position of other parties creditors of the said James M. Woolfolk, who were not before the court in said cause.

Upon said motion the court ordered and decreed that the remainder of said fund, after payment of the claim of I. C. Plant & Son, should be turned over to the trustee in bankruptcy of said bankrupts, to be distributed according to the legal priorities of the creditors of said bankrupts

II.

Errors Assigned.

1st. The court erred in decreeing that the mortgage lien of I. C. Plant & Son is superior to the judgment lien of Daniel F. Gunn, guardian.

2d. The court erred in decreeing that Plant & Son should be paid out of said fund raised by the sale of said mortgaged land in preference to said Gunn, guardian.

3d. The court erred in decreeing that Plant & Son should have any of said fund.

4th. The court erred in decreeing that the remainder of said fund should be paid "to the trustee of said bankrupts, to be distributed according to the legal priorities of the creditors of said bankrupts, instead of said Daniel F. Gunn, guardian."

5th. The court erred in deciding that the judgment of said Gunn, guardian, did not constitute a lien upon the property of said James H. Woolfolk for the amount of either the principal or interest of said judgment until said judgment was amended in 1871, and said verdict was entered on the minutes of the court.

6th. The court erred in deciding that there was no verdict or judgment rendered by said Bibb Superior Court, in favor of Gunn, guardian, against said Woolfolks, until said verdict was entered on the minutes of said court.

7th. The court erred in deciding that Gunn's judgment did not constitute a lien on said lands at the date they were mortgaged by Woolfolk to Plant & Son.

8th. The court erred in deciding that the equitable right of Plant & Son to said fund is superior to that of Gunn, guardian, and that Gunn should have said fund to be ap-

plied to the mortgage debt and follow other property of the said bankrupt, James H. Woolfolk.

III.

I will consider all the above specifications of alleged errors touching the validity and lien of said verdict and judgment together.

The errors of law into which Judge Woods was led, I respectfully insist, grew out of a mistake as to the facts disclosed by the record certified from Bibb Superior Court. In his opinion, (2 Woods' Cir. Ct. Rep., p. 373, et seq.,) he says, (373, last par.,) "at the November term, 1866, * * no verdict *or judgment* was entered upon the minutes of the court, nor at any subsequent time, until the April term, 1871," &c. This mistake he repeats, p. 374, par. 4: "There is no entry to be found upon the minutes of the Bibb County Superior Court of any verdict *or judgment*, or of any other proceeding whatever, in the case of Gunn, &c., until the April term, 1871," &c.

Again, top page 375: * * "Nor do the minutes of the court show that any *judgment whatever* had ever been rendered for the principal sum, nor do they show any judgment *nunc pro tunc* for such principal sum."

Again, page 379, par. 2: "Down to this day, so far as the record shows, there has never been a judgment entered upon the minutes of the court, either by *nunc pro tunc* order or in any other manner, for the principal sum claimed to be due Gunn."

Again, same page, p. 3: "Suppose Plant had gone to the record to find the date and amount of the judgment of which Woolfolk spoke," (Woolfolk had notified Plant of this judgment before he took the mortgage,) "the minutes of the court and *judgment docket* would have shown that no such judgment existed. He cannot be charged with notice of anything more than the records of the court revealed. All that he could have learned, even by reading every paper in the case, would be that the jury had rendered a ver-

dict which had never been entered on the minutes of the court, and upon which *the court had never pronounced any judgment.*"

There is no ~~judgment~~ docket in Georgia, but there is an execution (*fi. fa.*) docket, which would have shown Plant: 1st, the parties to the suit; 2d, amount and date of verdicts, principal, interest, and costs; and that a *fi. fa.* was issued from that verdict and the judgment entered up thereon just seven days after the judgment, to wit, on the 28th November, 1866.

Again, and lastly, same page, last par: "The subsequent action of the court in ordering the verdicts *and judgment* to be entered upon the minutes could not affect the rights of intermediate incumbrancers."

I will now show—

1st. That there was a verdict in November, 1866.

2d. That judgment was entered up on that verdict, according to law, for the *principal* sum, judgment for the interest having been overlooked by mistake of counsel for plaintiff; and that said judgment for said principal sum was entered upon the minutes of Bibb Superior Court at the November term, 1866.

3d. That a *record* of verdict and judgment was made during this term.

4th. That another *record* "*of all the proceedings*" in this suit was made within six months after that term expired, and is among the records of Bibb Superior Court.

5th. That a *record* is notice to the world.

The first two facts I will show—

1st. By the admissions of Plant & Son in their pleadings.

2d. By the admissions of defendants in *fi. fa.* (Woolfolks) in their motion to set aside the *fi. fa.* and judgment.

3d. By the transcript of the records of Bibb Superior Court.

4th. By the transcript of the same record as sent to and reviewed by the Supreme Court of Georgia.

The 3d and 4th, above stated, I will establish, as conclu-

sions of law, by showing what are the duties of the clerk of the superior court, and the 5th I will show by a decision of the Supreme Court of Georgia.

1st. That the jury rendered a verdict is not denied. Its validity is attacked because it did not go on the minutes at that term.

2d. Judgment was entered up for the *principal* sum.

By the law of Georgia in 1866 (which was changed by the constitution in 1868) a judge or court could not give judgment in a civil suit without a *verdict of a jury*. "Whereupon," that is, in view of the verdict rendered by the jury in this case, "*it is considered by the court* that the plaintiff do recover," &c. "*Judgment signed*," &c.—(Record, p. 8, top.)

The plaintiff's attorney in Georgia writes out the judgment. The judge never signs or enters up a common-law judgment. This the attorney does as the officer of the court, and *did* in this case.—(Code, sec. 3,568.)

Again (Record, p. 2, p. 3 of their bill): Plant & Son admit that judgment was entered up, and complain *only* that the *verdict* was not entered upon the minutes.

Again (p. 13, order for interest): "The court *adjudges* that plaintiff may amend his *said judgment*" (for principal), by including interest, "as contemplated by *the verdict*."

Again (same page): The order to enter the verdict on the minutes assumes that the *judgment* for the principal sum was already on the minutes. In fact this is assumed by both orders.

Again (p. 14): The Woolfolks, in their grounds of motion to set aside this judgment, do so *solely* on the allegation that the *verdict* was illegal. This motion the court overruled and gave a supplemental *judgment for the interest*.

Again: The supreme court, in reviewing these two orders of the court below, (allowing the judgment amended for the interest and the verdict to be spread on the minutes,) affirm both judgments and only require the plaintiff below to enter on the remitter an agreement that the surety (J. W. Woolfolk) might avail himself of any discharge from

the failure to enter the *verdict* on the minutes. In all these decisions, motions, and pleadings no suggestion is made that the judgment for the *principal* debt was not entered on the minutes in November, 1866.

The facts, 3d and 4th above, I show as follows: The clerk is required (code, sec. 267, cl. 5, par. 6) to keep "an execution docket and therein the names of plaintiffs, their attorneys, and the defendants, the amount of principal and interest and costs, the date, the term to which returnable, to whom and when delivered, and by whom and when returned, and an entry of satisfaction or *nulla bona*, as the case may be, with the dates thereof." The record shows (p. 8) that an execution was issued, giving names of parties, amount of principal debt, &c., on the 28th November, 1866. These facts must all have been recorded by the clerk in the execution docket. No suggestion has ever been made at any stage of this case by Plant & Son, or by defendants in *fi. fa.*, that this docket, which is a record of the court, was not correctly kept. Therefore it existed in November, 1866, for the law presumes the officer did his duty.

The other fact, as a conclusion of law, appears thus: The code (same sec., cl. 6) requires the clerk "to record in well-bound books, within six months after final determination of any civil suit, *all the proceedings relating thereto.*" No one has ever questioned even the existence of this record. Therefore, in law, it was recorded within six months after the Nov. term, 1866. And, as it must contain "*all* the proceedings in any civil suit," it contained, 1st, this verdict, and, 2nd, this judgment. For, that the jury did render verdict, and that judgment was entered thereon, no one denies. They were a part of the *proceedings* in that suit at the November term, 1866. The proceedings here spoken of do not mean the minutes, for they are a book—a record—in themselves, and do not contain "*all* the proceedings" of the court. They are an abstract of those proceedings, as the word "minutes" implies. The minutes are approved and signed by the judge. The records referred to are not.

The 5th, that a record is notice, is settled in 40 Ga., p. 59.

His Honor, Judge Woods, was clearly in error as to the facts. He decided that there was neither verdict nor judgment before April, 1871. I have shown that there were both. The verdict, as a fact, is admitted, but its efficacy in law, as to third parties, the judge denies, because, not being on the minutes, it was not notice to third parties. Of that matter of notice I will say more hereafter. I have shown, also, that there was a judgment for the *principal debt* in November, 1866, and that it was on the *minutes*, by showing:

1st. Plant & Son do not question it in their pleadings.

2d. The Woolfolks do not question it in their motion to set aside.

3d. The superior court by judgment declares there was a valid judgment for the principal.

4th. The transcript of record contains a judgment entered up by plaintiff's attorney in conformity to the code.

5th. The supreme court also so decide by affirming the court below.

6th. And the law concludes that there was a complete record of both verdict and judgment in the court twelve months before Plant & Son gave credit to Woolfolk, Walker & Co.

Now, if there was a valid judgment it bound all the property of defendants in *fi. fa.* within the State of Georgia for seven years, without further action, even without execution being issued. The law does not require a verdict or judgment to be entered or recorded in any particular book, docket, or minutes, to make it binding on defendant's property, or to constitute notice to third parties. If there be a judgment, the lien attaches instantly, and all parties are bound to take notice. The superior court decided that there was a valid judgment for the principal debt rendered in Nov., 1866, and amended that judgment for the interest in 1871. The supreme court affirmed that decision. Whether they found, that the judgment was on the minutes, or was valid despite the minutes, does not appear, and

it matters not. It was valid, and therefore was a lien on this land when Plant & Son took their mortgage on it. This lien was for $11,212.50.

Judge Woods puts his decision solely on the assumption of fact that neither the verdict nor the judgment appeared in the minutes. Admitting for the argument that this be true, can this clerical omission invalidate the judicial action of the court?

The co-ordinate members of the court whose conjoint acts were necessary to decide between the plaintiff and defendants below were, first, the jury, and second, the judge. The jury *did act*, and gave a verdict for plaintiff. The judge did act, and gave judgment in pursuance of the verdict. Without the act of either there could have been no judgment. By the act of both there could be judgment even if there had been no clerk and no minutes. Code of Georgia, §209: "The acts of a court shall not lack validity for the want of a clerk; and whenever there is no clerk, or none to be had, or he is incapable of discharging his duty, and any court performs the duty itself, its action as such is valid." I am aware that the latter clause in the above paragraph does not apply to the fact in this case, because there was a clerk of Bibb court. But it shows that a clerk is not a member of a court whose separate act is necessary to give validity to its proceedings or acts.

Under the first clause of the above statute the court can act without a clerk and give valid judgment, and by the second he can, if he choose, act as clerk, as well as judge, and his clerical acts will be good as well as his judicial acts. But the judge is not compelled to be clerk to make his acts valid.

The judge performs the judicial acts—gives judgment—and the clerk records them. Is the verdict of a jury any the less a verdict because it is not copied or noted on the minutes or *abstract* of the day's proceedings by the clerk? Suppose that immediately on the return of a verdict, and

before any entry is made on the minutes, defendant should move to set aside the verdict for cause, would any court stop the defendant by suggesting, "You are premature —there is no verdict. The court knows nothing of a verdict in this case. Indeed, the jury have rendered no verdict. The court cannot possibly know whether the court or jury have done anything valid, unless the clerk shall so instruct the court by his *copy* of what the court or jury have done. And having examined the minutes of this court, and finding there no entry of a verdict, the court decides that there is no verdict for you to move against."

The answer to this will no doubt be that while there would be a verdict, valid as between plaintiff and defendant, it would not be binding on third parties. This, if true, is so only because the record of the verdict and judgment, until referred to in the minutes, do not constitute notice to third parties. There is no law in Georgia which so declares. No mention is made in the code of any record of a judgment or verdict being necessary to make it valid, or to constitute notice to the world. When a judgment is rendered in any court in Georgia it constitutes a lien *instantly*, on all defendant's property in the state, and all persons giving credit to any one is bound to know whether at any time, and anywhere in the state a judgment was rendered against him, and to know whether it is valid or unsatisfied. The minutes of the court are not pointed out by statute as the only evidence or evidence at all of the existence or non-existence of a judgment. The decision of the Supreme Court of Georgia, which comes nearest to holding adversely to the view I am presenting, is in 42 Ga., p. 203. That was a criminal case. The defendant pleaded guilty, and the plea was entered on the minutes. About three years after, when he was called up for sentence, he moved in court that he had withdrawn his plea of guilty at the term he made it, and had pleaded not guilty. There was no entry of the latter plea on the minutes. The supreme court held, that "if facts do not ap-

pear upon the minutes, *the legal presumption* is that they do not exist, especially after the lapse of three years." Here the defendant was trying to show *his own act* by the record, on which it would appear, and it not being on any record there was no record evidence of it at all His word was set up against all the records of the court. In that case there was *no judgment of the court* in question, no *judicial determination* denied. And the court only said in that case, that a legal *presumption* arises, when the *records are silent*, that a fact asserted does not exist. But cannot every legal presumption arising from the silence of one record of a court be overcome by the voice and positive evidence of another record of the same court, made at the same sitting, especially when the law fails to say that any one record of the court shall be sole witness to that fact?

All in the code relating to the minutes is the following:

Sec. 208. "The minutes of every court of record must be read each morning by the clerk in open court, and on the adjournment of the court must be signed by the judge, judges, or justices thereof; but, if not signed, are valid, unless *repudiated* by the court."

Sec. 267, cl. 2. Among the clerk's duties is "to attend all sessions of the courts and keep fair and regular minutes of their proceedings from day to day, including a transcript of the judge's entry on his docket, when not more fully shown, in a book kept for that purpose."

The State of Georgia did not seem to place absolute confidence in the minutes of her courts, and to have made them the only evidence of the proceedings of her courts, when she clothed her judges with power to *repudiate* the evidence. But no judge in Georgia can *repudiate* a verdict or his own judicial determination of a cause. He may set aside the one for good cause and grant a new trial, and he may change or modify the other to meet the law or the facts, but he cannot deny the existence or the contents of either.

But in Georgia, the minutes are not the only record of

the proceedings of courts. I have already shown, by the code, that the clerk must make a complete record of all the procedings in every civil suit within six months after adjournment.

If it was necessary that the verdict and judgment should be recorded among the proceedings of the court to constitute notice to third parties, then there was a record giving Plant & Son notice, to wit, the record of all the proceedings of the court made within six months.

1-Ga., 559.
3 " 23.
40 " 59.

This record was completed twelve months before Plant & Son gave credit to Woolfolk, Walker & Co., and sixteen months before the mortgage was made. They, therefore, had notice twelve months before they gave credit to Woolfolk, Walker & Co., that Gunn had a verdict for principal and interest, and from the execution docket that a *fi. fa.* had been issued and was not eturned satisfied. Any record is notice to purchasers.

40 Ga., 56.

The 9th and last error above is that the court below decreed that the judgment of a state court affirmed by the supreme court of the state was void, *pro tanto*, and that in a collateral proceeding, without even suggestion of fraud or want of jurisdiction in the state court.

10 Wall., 308, Cooper vs. Reynolds, and cases cited page 316, note.
45 Ga., 97.

I have endeavored so far, without taking up each specification of error separately, to show that the court below erred in deciding that the verdict and judgment of Gunn were not valid, and in decreeing said fund to Plant & Son.

Of the second and only other ground taken by complainants below for relief in equity, to wit, that Gunn should be compelled to follow other property of Woolfolk and leave

this fund for them, I hardly know what to say, for it is patent on the face of his decision that His Honor, Judge Woods, ignored this ground entirely. But, as the question is made by the pleadings and the whole case is under review, I will notice this ground in conclusion.

It is not good, for the following reasons:

1st. Because, as it necessarily assumes that the judgment of Gunn is valid in law and binding on all the property of defendants in execution, including the mortgaged land, Plant & Son took subject to Gunn's lien.

2d. Because equity will not compel a creditor of a superior lien to give up a right unless the debtor be the same.

Here the debtor of Gunn is J. H. Woolfolk, and the debtor of Plant & Son is the firm of Woolfolk, Walker & Co.

3d. Because equity will not drive a general lien creditor from one fund to another unless both funds are "equally accessible."—(Code, sec. 1,949.)

Here is a fund in court. The other fund, if it exist at all, is in lands scattered here and there in several counties, in the hands of purchasers, and Gunn can only subject them at great expense of counsel fees and outlay of costs in litigation, and by suit in each county where the land lies, and after delay, perhaps, for years.

39 Ga., 319, Denham vs. Williams.

27 Ga., 53, Semmes vs. Boykin, Admr.

4th. Because Plant & Son did not give credit to J. H. Woolfolk, Gunn's debtor, but to another person, to wit, the firm of Woolfolk, Walker & Co.

5th. Because their credit was given, not on the responsibility of Woolfolk as a member of that firm, nor on the land, but on the cotton which Woolfolk, Walker & Co. had in possession, and which Plant & Son allowed them to keep in possession and sell.—(Record, p. 31, Plant's testimony.) This was an injury to Gunn, because under his judgment (admitted to be valid by the prayer of the bill for this particular relief) Gunn could have served a garnishment on

Walker & Co., Woolfolk's partners, and have subjected Woolfolk's interest in said cotton to his judgment. But Gunn's forbearance enured to the benefit of Plant & Son, and they by their negligence permitted their debtor to dispose of the cotton and thus diminish their debtor's ability to pay. They then got a lien on another property, also subject to Gunn's lien, and now ask that Gunn shall surrender that also. In other words, they ask your honors to reverse the maxim and declare that the law favors the sleeping and the negligent creditor.

6. Because Plant & Son were not vigilant. And—

7. Because they took their lien knowing it to be junior to Gunn's. These two reasons I notice together.

"He who takes with notice of an equity, takes subject to that equity."—(Code, sec. 3091.) I have shown that Plant & Son had notice. They had the only notice the law of Georgia requires of a judgment, and that is, its rendition by a competent court. But they had actual notice also. J. H. & T. J. Woolfolk testify that they told I. C. Plant of this judgment before he took the mortgage.—(Record, 39 and 40.) This Plant denies. The two witnesses are disinterested; the one (Plant) directly interested. The one is corroborated by nothing; the two by every probability. Plant (son) swears that Woolfolk was the capitalist of the firm, Walker & Co. having nothing. They looked to Woolfolk for their money. Plant says Woolfolk had abused his confidence, sold his security (the cotton) and thereby committed larceny. His demand was over $4,000, and he anxiously sought for payment or security. Security was his only hope. He had not unbounded confidence in Woolfolk's veracity or honesty. This naturally suggested caution. As the essentials of security are title and value, and as value includes freedom from incumbrance, Plant sought for information. He inquired of his debtor, and of T. J. Woolfolk, and both told him the *title* was good, but that Gunn's judgment covered the property. When told that the judgment was founded on a debt contracted prior to the war, he said he

cared not a snap of his finger for such a claim, the legislature would wipe it out.

If the Woolfolks told the truth, and Plant acted as every rational man does in taking security, then he had actual notice. If Plant told the truth, he has put himself beyond the reach of the long arm of equity, for his negligence was simply gross.

His debtor resided in Bibb county. This is shown by the suit of Gunn and by the bill.—(Record, p. 1, and by copy mortgage, page 29, bottom.) The only county in which a valid judgment can be obtained, as against other creditors, is in the county of the debtor's residence. Plant & Son had only to inquire of the clerk of the court of Bibb county if there was a judgment against J. H. Woolfolk. One of the clerk's duties is (Code, sec. 267, cl. 13) "to make out and deliver to any applicant, upon payment of legal fees, a correct transcript, properly certified, of any minutes, record, or file of their office." An application would have furnished to him:

1st. A transcript of the verdict for $11,202 with interest from 1860, from the declaration "*of file.*"

2nd. A transcript of a *judgment* for said principal on the *minutes* and of *record.*

3d. A transcript of execution issued in November, 1866, for said principal and said interest and costs.

The clerk's office was not a half-mile from his place of business, and over $4,000 were involved and in great jeopardy, as I. C. Plant himself admits. From their own admissions and sworn statements, they allowed their debtor to make way with the security on which they had advanced over $6,000 (Record, p 35) and took other security without asking a single question as to its value or the rights of other creditors to or in it.

8. Because they have failed to show that the lands which they seek to compel Gunn to follow are sufficient to satisfy his judgment. By the bill and two amendments they allege that Woolfolk owns 2,266 acres. Woolfolk, in his bank-

rupt schedule, swears to ownership of but three lots. Murray, trustee in bankruptcy of Woolfolk's estate, swears that Woolfolk returned the land mortgaged to Plant & Son, and a tract in Bibb county, worth about $800, and no more, except certain lots set apart to him as exempt.—(Record, p. 21.) He admits that he, as trustee, is suing for certain lands lying in Jones county, which he believes belong to the bankrupt estate.

But, not only is the quantity of land uncertain and small, but the court is not informed by Plant & Son what its value is. This is the most important of all the facts and the one on which there is the least light. Your honors cannot tell, from this record, whether there is enough property, outside of the fund in court and in dispute, to meet one-half or one-quarter of Gunn's demand.

P. H. Fonvoove
Counsel for Appellant.

United States Supreme Court.

Daniel F. Gunn, Guardian &c., et. al.,
Appellant,
vs.
Increase C. Plant, et. al.,
Appellees.

IN EQUITY.

Appeal from the Circuit Court of the U. S. for the Southern District of Georgia.

In 1869 the firm of Wolfolk, Walker & Co. (of which James H. Wolfolk was a member) was adjudicated bankrupt and a Trustee appointed, who shortly thereafter sold certain real estate belonging to the said Wolfolk for $5,834, under a consent with I. C. Plant & Son that the proceeds should be held for proper distribution by the Bankrupt Court. Subsequently, said Plant & Son filed a bill, showing that they held a mortgage on the property sold, dated December 7th, 1868, executed by said Wolfolk and foreclosed at October Term 1869 of the Superior Court of Jones County, Ga, and claiming that the proceeds of said sale should be applied to the payment of their mortgage judgment in preference to an alleged judgment in favor of Daniel F. Gunn, Guardian, against Thomas J. Wolfolk and James H. Wolfolk as principals, and John W. Wolfolk as surety, for the two following reasons;

1st. Because said alleged judgment in favor of said Gunn had never been entered of record in the court which, it was claimed, ren-

dered it, and was founded on an alleged verdict which had never been entered on the minutes of said court, prior to the execution of said mortgage.

2nd. Because there was real estate belonging both to the principal and the surety to the said Gunn judgment, not covered by the said mortgage, amply sufficient to pay the amount due on said judgment, and on which said judgment was a lien under the laws of Georgia, which real estate was situated in the State of Georgia.

This bill was answered by the said Gunn, Guardian, and also by the Trustee in Bankruptcy.

On the trial, it appeared that at the November Term 1866 of the State Superior Court there was an entry on the Bench Docket in the handwriting of the presiding Judge opposite the case of Gunn, vs James H. & T. J. Wolfolk *et al*, in the words following "Nov. T. 1866 verdict," and also what purported to be a verdict endorsed on the declaration in said case, and signed by a person as foreman, but the minutes and records of the court did not show that this alleged verdict or any judgment entered thereon had been recorded at that term. At the April Term 1871, of said court said alleged verdict was on motion of Gunn's attorney ordered to be entered on the minutes of the court *nunc pro tunc*.

It also appeared at said trial (see printed record pages 36 and 37) that James H. Wolfolk owned real estate in Bibb and Jones Counties Georgia, estimated to be worth more than the amount due on the alleged judgment in favor of the said Gunn.

On said trial also there was proof, of a somewhat conflicting character, as to some threats made by I. C. Plant of prosecuting James H. Wolfolk criminally if he did not secure Plant & Son's debt. (See pages 32 and 39 printed record.)

The Circuit Court decreed that out of the proceeds of the sale of the mortgaged property, the amount due on the mortgage should first be paid, and the remainder of said proceeds should go into the hands of the Trustee in Bankruptcy for distribution under the Bankrupt Act.

The following positions are respectfully submitted in support of the decree of the Circuit Court and the attention of the court is respectfully called to the following authorities.

1st. A judgment of a court can only be shown by its records. A judgment is not complete until entered of record. See Tidd's Practice 930, 5th Blatchford'e Reports, page 5.

As to local law of Georgia on this subject see. 21 Ga. Reports 135 11 Ga. Reports 330. Revised Code Sec. 267, 38 Ga. 444. 4 Ga. 137, Code Sec. 3568.

2nd. A judgment unrecorded or incomplete by reason of defective record is not a good lien against a bona fide purchaser from, or one holding a bona fide incumbrance on the property of, the debtor. See 12 Ga. Reports, 281, 40 Ga. 56.

3d. The threats of a criminal prosecution alleged to have been made by Plant against Wolfolk are not sufficient to show that the mortgage was executed by Wolfolk under duress. See. 1st. Sheppard's Touchstone 62, Coke's 2nd Institutes 482, 6th Mass. Reports 506, Revised Code of Ga. Sec. 2637, 45 Ga. 197

4th. According to the testimony of Blount and Ross, which was not disputed (see printed record pages. 36 and 37) there was real property in Georgia liable to the payment of the Gunn judgment more than sufficient to pay the amount due on that judgment. If Gunn had a legal, binding judgment in 1866 it bound all the real estate he then owned. See. Rev. Code of Ga. Sec. 3580.

The lands referred to, in the testimony of Blount and Ross were owned by Wolfolk, and in his possession in 1866 and continuously thereafter until February 1869. They were then sold, or a large part of them to a brother of the said Wolfolk. But he held them and still holds them subject to the lien of that judgment, if it was a valid judgment. Equity will compel Gunn to collect his judgment out of these lands and thus protect the mortgage creditor. See 1st. Hopkins' Reports 460. 4th Johnsons Ch. Reports 123, 39 Ga. 320. Revised Code of Ga. Sec. 1949, 2nd McLean's Reports 44.

5th. In support of that part of the decree which ordered the surplus after paying the mortgage debt, into the hands of the assignee, see Bump (8th edition.) pp. 162, 163, 585, 2nd Bank. R. 506, 3d Bank R. 508.

CLIFFORD ANDERSON.
Attorney for Appellees.

574-673

23 Pulm 184

Arrived 29-40 Sail

1 Sellers 559

9 Wall

16 Wall

---

10 Sail 6H

11 Gun 135

21 Gun 267 SSP

Code 552 381

Gun

21 no code (873)

4-67

Goddard
v
Ordway

This is a motion and
not among the Records